CIV/APN/359/97

IN THE HIGH COURT OF LESOTHO

In the matter between

MAJANTJA FOOTBALL CLUB **Applicant**

and

MATLAMA FOOTBALL CLUB **Respondent**

JUDGMENT

Delivered by the Honourable Mr. Justice M.M. Ramodibedi
on the 7th day of November 1997.

This is an application for rescission of the Order of this Honourable Court granted in favour of the Respondent on the 30th day of September, 1997. The order was granted by default.

It will no doubt be convenient if I start this judgment by referring to the main legal principles involved in an application for rescission of default judgment. In terms of Rule 27 © of the High Court Rules the party applying for rescission of default judgment must, at the hearing of the application, show good cause why such judgment must be rescinded. The court has a discretion whether or not to set aside the judgment.

In Chetty v Law Society, Transvaal 1985 (2) S.A. 756 AD at 765 Miller JA duly acknowledged the fact that the term "sufficient cause" or "good cause" defies precise or comprehensive definition due to the fact that many and various factors require to be considered. Nevertheless the Learned Judge of Appeal expressed the following principles with which I am in respectful agreement:

> "But it is clear that in principle and in the long-standing practice of our Courts two essential elements of "sufficient cause" for rescission of a judgment by default are:
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> (I) that the party seeking relief must present a reasonable and acceptable explanation for his default; and
>
> (ii) that on the merits such party has a bona fide defence which, prima facie, carries some prospects of success. *(De Wet's case supra at 1042; PE Bosman Transport Works Committee and Others v Piet Bosman Transport (Pty) Ltd. 1980 (4) SA 794 (A); Smith NO v Brummer NO and Another; Smith NO v Brummer 1954 (3) SA 352 (O) at 357-8).*
>
> It is not sufficient if only one of these two requirements is met; for obvious reasons a party showing no prospects of success on the merits will fail in an application for rescission of a default judgment against him, no matter how reasonable and convincing the explanation of his default. And ordered judicial process would be negated if, on the other hand, a party who could offer no explanation of his default other than his disdain of the Rules was nevertheless permitted to have a judgment against him rescinded on the ground that he had reasonable prospects of success on the merits."

I shall bear these principles in mind in determining this matter.

I turn now to the background leading to this application. The essential facts are indeed hardly in dispute.

At the outset I should mention that Applicant and Respondent are football clubs playing in the Premier League registered under Lesotho Football Association which is a voluntary association. More about this later.

It is common cause that prior to the 12th April 1997 the Premier League Management Committee released a fixture scheduling official league games for the entire 1997 football season and that in terms of this fixture the Respondent was scheduled to play against the Applicant at Mohale's Hoek on the 8th May 1997 at 1500 Hours. Indeed the parties are on common ground that this game was never postponed.

On the scheduled date in question the Respondent duly proceeded to Mohale's Hoek to honour its League fixture game against the Applicant. On arrival at Mohale's Hoek Stadium where the game was to be played the Respondent prepared its team and took the field of play ready for the commencement of the game.

At around 1500 HRS. Applicant's Committee, led by one Mr. Russell who has filed an affidavit on behalf of the Applicant, entered the field of play and indicated to Respondent that there were no official referees and that therefore "they were not prepared to play against Applicant, especially if Applicant was to provide a referee and one senior linesman."

The Respondent insisted that in terms of the Rules and Regulations of the Premier League it was entitled to provide a Referee and one Senior Linesman in view of the absence of officially delegated referees. In that regard Respondent duly provided a Referee and a Senior Linesman being Messrs. M. Seholoholo and L. Tlebere respectively. These two officials entered the field of play and in due course the Referee duly blew his whistle signalling for both teams to present themselves for the game. Only Respondent did present itself while Applicant was nowhere to be seen until the Referee called off the match thirty minutes later.

In due course both teams submitted their written reports to the Premier League Management Committee in terms of the Rules and Regulations of the Premier League.

I may pause here to refer to the relevant Rule/Regulation relating to a situation where the officially delegated referees fail to turn up for a fixture match. It is Rule/Regulation 12 (I) of the Lesotho Premier League (Competition) Rules and Regulations and it provides as follows:

> "12. (I) In the event of the officially delegated Referees failing to turn up for a fixture match, the visiting team shall provide a Referee and one Senior Linesman. The host team shall provide the second Linesman. Such Referee and Linesmen need not necessarily be qualified as specified in these Regulations nor do they need to be registered with the Association or any other association as referees."

On the 13th August 1997 the Premier League Management Committee sat to consider the written reports by both teams and in due course reached a decision to the effect that the Applicant should forfeit three (3) points and three (3) goals of the

match in question to the Respondent in terms of the Lesotho Premier League (Competition) Rules and Regulations particularly Rule/Regulation 12 (h) (ii) which reads as follows:-

> "In the event of failure in presenting a team within thirty (30) minutes after the official kick off time the Referee shall so report and recommend that it be declared that the defaulting team shall forfeit the three (3) points and three (3) goals of the match and shall call off the game accordingly. A disciplinary action may also be preferred against the offending team."

The Applicant apparently "appealed" to the Executive Committee of Lesotho Football Association which reversed the decision of the Premier League Management Committee and decided that the match in question be refixtured. This decision precipitated an application by the Respondent to this Honourable Court for review resulting in the Order of the 30th September, 1997 as stated above. Hence the present application for rescission thereof.

It is pertinent to mention that on the 25th September 1997 when I granted a Rule Nisi calling upon the then Respondents namely Lesotho Football Association, Premier League Management Committee and Majantja Football Club (the Applicant herein) to show cause, if any, on the 30th September, 1997 why, inter alia, the decision of the Premier League Management Committee in the matter between Applicant and Respondent shall not be reinstated I specifically ordered that the Respondents including the present Applicant must file their opposing affidavits on or before the 26th September 1997 at 4.30 p.m.

The Applicant failed to file a Notice of intention to oppose with this Court and worse still failed to file its opposing affidavit on or before the 26th September

1997 as ordered by the Court. Nor did the Applicant file the affidavit at any time at all thereafter.

On the 30th September 1997 when the matter was placed before me for hearing the Applicant failed to make any appearance either through its attorney or its duly authorised official. Worse still no explanation or excuse of some sort was furnished to the Court. More about this later. Suffice it to say that in the circumstances the Court had no hesitation but to confirm the Rule and reinstate the decision of the Premier League Management Committee in favour of the Respondent.

WILFUL DEFAULT

In its attempt to show that it was not guilty of wilful default in the matter the Applicant has filed an affidavit of one Sebatana Russell who states as follows in paragraphs 2, 3 and 4 thereof:

> "2.
>
> On or about the 26th day of September, 1997 the Founding papers in the main application were received by one **Letsie** on behalf of the Third Respondent herein. The said Letsie and I duly instructed **Messrs. G G Nthethe & Co** to oppose the application.
>
> 3.
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> We were informed that the intention to oppose has been served upon **Messrs M T Matsau & Co,** however that it has not been filed in Court as the Court file could not be found at the Registry. We verily

believed this information to be true. We were further informed that the Registrar of the High Court has been informed that the Opposing Affidavit would be filed later in the day on 30th September, 1997 (Refer to the affidavit of G G Nthethe annexed hereto).

4.

I aver that the delay in the filing of the affidavit may have emanated from the offices of the Attorneys, as such the Applicant cannot be held to be in wilful default."

The Respondent's answer to these allegations is contained in paragraphs 4, 5 and 6 of Respondent's answering affidavit deposed to by its president one Malefetsane Kobeli in the following terms:-

"4.

AD PARA 2 THEREOF

4.1 Applicant is being dishonest and does not want to take this Honourable Court into his confidence. The Founding Papers in the main application were served on and received by One Mr. LETSIE on behalf of the Applicant herein on the 25th day of September 1997 and not on the 26th day of September 1997. I kindly refer this Honourable Court to the Return of Service dated 25th day of September, 1997 that has been filed in the court's file.

4.2 Consistent with its attitude of not taking the court into its

confidence, Applicant does not say when it instructed **G.G. NTHETHE** and company to oppose the Respondent's application.

4.3 This attitude of the Applicant is designed to circumvent the stipulated times within which Applicant ought to have filed its opposing papers in the main application.

5.

AD PARA 3 THEREOF

5.1 It is correct that the intention to oppose was served upon Respondent's attorneys of Record, this was on the 29th day of September, 1997, however this was well out of time.

5.2 I may add that it seems amazing that it is said the court file could not be found at the Registry. Seemingly no diligent search was made nor was any attempt made to secure the official court date stamp on the notice of intention to oppose to indicate Applicant's serious intentions, I shall deal further with this aspect when dealing with the said affidavit of G.G. NTHETHE who significantly does not allude to the story of the missing court file. This casts doubts as to whether the court file ever went missing. And leads one to the irresistible conclusion that Applicant only half heartedly thought of the matter late in the day when it was already out of time.

6.

AD PARA 4 THEREOF

6.1 Both the Applicant and its Attorney are collectively in wilful default for the following reasons.

6.2 By virtue of its lack of bona fides in claiming that the Founding Papers were only served on it on the 26th day of September, 1997 when in fact they were served on the 25th day of September 1997 and

6.3 The fact that Applicant did not even file its notice of intention to oppose with the court nor intimate its intentions at the earliest opportunity by making formal appearance before the Honourable Court on the 30th September, 1997 when the matter was called clearly demonstrates that Applicant and its Attorneys were never serious and are certainly in wilful default.

6.4 It is even amazing that Applicant only filed its intention to oppose the main application on the 2nd day of October, 1997 two(2) clear days after the rule had been confirmed and served on the applicant.

The question would be whether service of intention to oppose on the Attorneys of Respondent without filing same with the Honourable Court makes it an official court document."

The Deputy Sheriff's return of service filed of record clearly shows that

copies of Notice of Motion and order of Court were served upon "all respondents" on the 25th September 1997. Significantly the Registrar has even appended her approval stamp dated 25/09/97 and signed same. I find that this corroborates the Deputy Sheriff's return of service in the matter.

In 'Mahopolang Moqhali v Ephraim Lephole and 2 others CIV/APN/6/96 I had occasion to state as follows:-

> "Now it is trite law that the return of service of a sheriff or duly authorised person to perform his function is prima facie evidence of what it states and that therefore the clearest and most satisfactory evidence must be adduced if it is disputed.
>
> See **Doti Store v Herschel Foods (Pty) Ltd. 1982-84 LLR 338 at 339 per Mofokeng J (as he then was).**
>
> See also **Michael Mpheta Ramphalla v Barclays Bank and Another CIV/T/565/92/CIV/APN/257/95** (unreported)

Indeed in Deputy Sheriff Witwatersrand v Goldberg 1905 T.S. 680 at p 684 Solomon J put the principle succinctly as follows:-

> "It is, I think, clear, in the first place, that if the return can be impeached it can only be impeached on the clearest and most satisfactory evidence.""

These remarks are apposite to the case before me.

The onus of proof is on the person who seeks to impeach the Deputy Sheriff's return of service. In order to succeed he must adduce the clearest and most satisfactory evidence that what the return of service states is false.

As will be seen from paragraph 2 of the founding affidavit of Sebatana Russell the latter contends himself with a bare unsubstantiated allegation that the founding papers were received by one Letsie on behalf of the Applicant on or about the 26th day of September, 1997. He does not say that he was present and worse still no attempt has been made to file a supporting affidavit of the said Letsie.

I have also noted the evasiveness of the deponent in the language that he chooses regarding the alleged date of the service of process namely "on or about the 26th September, 1997." I have no doubt in my mind that this evasiveness and/or vagueness was deliberately calculated to mislead the court. I cannot imagine that the deponent would forget the exact date of service hardly five days later in such an important matter as this.

In the result I accept the Deputy Sheriff's return of service that the founding papers in the matter were served upon the Applicant on the 25th September, 1997. Accordingly I reject as false the Applicant's version that it was served on or about the 26th September 1997. I have taken the Applicant's attempt to mislead the Court in this regard in a very dim light. The decision which I am about to reach has been partly influenced by this factor. A litigant who asks for an indulgence of the Court particularly on an urgent basis as in this case must be scrupulously accurate in his statement to the Court. Utmost good faith is required of such litigant.

See Duncan T/A San Sales v Herbor Investments (Pty) Ltd. 1974 (2) S.A. 214 at 216 per Hiemstra J.

As earlier stated it must always be borne in mind that the Court has a discretion whether or not to grant an application for rescission of default judgment. Such discretion however is not an arbitrary one but is one that must be arrived at after all relevant factors have been taken into account. It is a judicial discretion. The need for litigants to place accurate statements of facts to the Court cannot be overemphasised.

As earlier indicated the Applicant neither filed opposing papers with the Court as ordered nor did it make any appearance in court on the return date namely the 30th September 1997. No sufficient and acceptable explanation has been furnished regarding the default. Nor has the Applicant made any application for condonation of the late filing of its opposing papers. I find that the Court was treated in a cavalier manner and in the circumstances I am driven to conclude that the Applicant was in wilful default.

In paragraph 3 of his founding affidavit Sebatana Russell relies on inadmissible hearsay evidence that the Notice of intention to oppose could not be filed in court because the court file could not be found at the Registry. He does not even disclose the source of his information as would be required of him in an urgent matter such as this.

I should mention that the reason why courts insist on such disclosure is to give some measure of confidence to the court regarding the veracity of the information since the source itself can always be tested by being called to Court to testify and face cross examination should the need arise.

Nor do I think that the supporting affidavit of Applicant's attorney Mr.

Goitsemang Gamoga Nthethe is of any assistance to the Applicant. Mr. Nthethe states in paragraph 2 of his supporting affidavit:

"2.

I confirm that I had intimated the Applicant's intention to oppose by filing the intention to oppose. I further confirm on the 30th September, 1997 I met the Registrar of the High Court, I informed here that the Opposing Affidavits were a bit late and would be filed later in the day. I assumed that this information would be passed to the Honourable Judge who was seized with the matter and to the Attorneys of the Respondent."

Significantly Mr. Nthethe makes no reference to the allegation that the court file ever went missing at any stage or at all.

I think Mr. Nthethe has in effect unwittingly poured oil on a raging fire so to speak by stating that on the 30th September 1997 he met the Registrar of the High Court and informed her that the opposing affidavits were "a bit late" and would be filed later in the day. With respect I find that this is outrageous in the extreme. As one of the most senior and experienced attorneys of this court Mr. Nthethe must know that he cannot set his own rules and decide when to file papers notwithstanding the Court Order to the contrary. As earlier stated the Court had unambiguously ordered that Applicant's opposing affidavit be filed on or before the 26th September, 1997 at 4.30 p.m. It must be apparent therefore that on the 30th September 1997 when Mr. Nthethe allegedly met the Registrar the opposing affidavits were well out of time and not just "a bit late." What this then meant was that the Applicant was obliged to make an application for condonation of the late

filing of same. This it contemptuously failed to do. I can only conclude that the Court was treated with disrespect and that this is a factor which the Court cannot ignore in determining that the Applicant was in wilful default.

I have also taken into account the fact that as earlier stated neither the Applicant nor its attorney made an appearance in court on the 30th September 1997 nor, again as earlier stated, was any explanation furnished to the court regarding the non-appearance. To aggravate the matter no such explanation has been furnished either in the founding affidavit of Sebatana Russell or the supporting affidavit of the Applicant's attorney Goitsemang Gamoga Nthethe. Hard to believe as it may sound no such explanation was for that matter furnished to the court during the course of argument before me on the 20th October, 1997. Indeed as I write this judgment I still do not know why the Applicant or its attorney failed to appear in court on the 30th September, 1997. The Court deserves to be treated with more respect.

In paragraph 4 of his founding affidavit Sebatana Russell half-heartedly blames the delay in the filing of the opposing affidavit on "the attorneys." Yet significantly nowhere does Mr. Nthethe support this allegation in his affidavit. For my part I observe that the deponent himself Sebatana Russell only deposed to the opposing affidavit on the 30th September, 1997 which was well out of time. He too must be adjudged to have contributed to the delay in the absence of any explanation why he only signed the affidavit on the 30th September, 1997 contrary to the Court Order. In any event, in view of the dilatoriness of the Applicant through its officers as fully set out above I am satisfied that this is a proper case where both Applicant and its attorneys must share the blame for being in default. In this regard the Court has not lost sight of the fact that the Applicant through its officers has tried to falsify the date as to the actual service of the founding papers. The Applicant's bona fides

are thus in question.

In any event I should mention that this Court is mainly attracted by the following remarks of Steyn CJ. (with Ogilvie Thompson, Holmes and Wessels JJA and van Winsen AJA concurring) in Saloojee & Another NNO v Minister of Community Development 1965 (2) S.A. 135 (A) at 141 B-H :

> "[I]t has not at any time been held that condonation will not in any circumstances be withheld if the blame lies with the attorney. There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered.... Considerations *ad misericordiam* should not be allowed to become an invitation to laxity .... If.... the stage is reached where it must become obvious also to a layman that there is a protracted delay, he cannot sit passively by, without so much as directing any reminder or enquiry to his attorney... and expect to be exonerated of all blame; and if ... the explanation offered to this Court is patently insufficient, he cannot be heard to claim that the insufficiency should be overlooked merely because he has left the matter entirely in the hands of his attorney. If he relies upon the ineptitude or remissness of his own attorney, he should at least explain that none of it is to be imputed to himself."

These remarks are apposite to the instant case and I respectfully agree with them entirely.

In all the circumstances of the case therefore I have come to the conclusion

that the Applicant's explanation is both unsatisfactory and unacceptable and that the Applicant was in wilful default by failing to file opposing affidavits as ordered and to make an appearance in Court. The application falls to be dismissed on this ground alone. It is thus, strictly speaking, unnecessary to make findings or to consider the argument relating to the Applicant's prospects of success.

In this regard I am mainly attracted by the above mentioned remarks of Miller JA in Chetty v Law Society, Transvaal (supra) at p. 765 namely that ordered judicial process would be negated if a party who could offer no explanation of his default, as in this case, other than his disdain of the Rules was permitted to have a judgment against him rescinded on the ground that he had reasonable prospects of success in the merits.

Nevertheless, in the interests of fairness to the Applicant and in order to give guidance in future it is necessary to examine Applicant's claim that it has a good defence.

BONA FIDE DEFENCE

Applicant's contention, if I understand it correctly, is that the Premier League Management Committee has no power to act in the manner that it did in the matter and that therefore it acted ultra vires its powers. It is sought to persuade the Court that in terms of Section 15 (c)(I)(ii) of the Constitution of Lesotho Football Association the "duty" to "examine protests and the reports submitted by clubs" and to "resolve disputes and validity or completeness of any match or competition" vests in the Disciplinary and Protests Committee only.

This Section reads in full:-

"15 © The duties of the Protest and Disciplinary Committee shall be :-

(I) to examine protests and other reports submitted by clubs, referees, members, appointed observers, and others concerning incidents on the field of play or its precints (sic) or anywhere else likely to bring the game or the Association into dispute. (sic).

(ii) to resolve disputes concerning the results and validity or completeness of any match or competition."

The Respondent's answer to Applicant's claim is twofold namely:

(a) The facts of the case do not fit in the situation envisaged in Section 15(c)(I)(ii) of the Constitution of Lesotho Football Association. I think there is merit in this argument in as much as the match in question never took off at all. Accordingly there can be no question of "completeness" of the match.

(b) The Executive Committee of Lesotho Football Association had duly delegated its powers to the Premier League Management Committee which therefore acted within its powers.

I proceed then to determine these contrasting claims and in doing so it is

necessary to refer to the relevant Sections of the Constitution of Lesotho Football Association as well as the Lesotho Premier League (Competition) Rules and Regulations.

I start from the premise that, as earlier stated, Lesotho Football Association is a voluntary association. Both Applicant and Respondent are members of the Lesotho Football Association as well as the Lesotho Premier League. Thus the relationship between the parties is contractual and the terms of such contract are to be found in the Constitution as well as the Regulations.

See Jockey Club of South Africa v Forbes 1993 (1) S.A. 649 AD at 654.

Now Section 5 of the Lesotho Football Association provides for the objects of the Association. Subsection (1) thereof significantly stipulates one of the objects as being:

> "(1) to promote, regulate and control the game of Football in Lesotho in every way which seem proper to the Association or its Executive Committee....." (my underlining).

As I read this subsection the Executive Committee of Lesotho Football Association is given carte blanche power to control the game of Football in Lesotho in every way including delegation of management powers, the establishment of leagues and sub-committees as well as the making of Rules and Regulations affecting football in the country.

In this regard it is necessary to read this subsection in conjunction with subsection 11 (5) of the Constitution which clearly empowers the Executive

Committee of Lesotho Football Association to delegate the power to run any competition to District and/or other Associations.

Indeed Section 10.2 of the Constitution provides that the Executive Committee may with the approval of the affiliates from time to time, "make, vary or revoke any Rules or Regulations," made under the competition.

It is pertinent to observe that the Lesotho Premier League (Competition) Rules and Regulations were made by the Executive Committee of Lesotho Football Association itself in terms of the above mentioned sections of the Constitution. Proof in this regard is to be found in the fact that the said Rules and Regulations have actually been signed by both the President as well as the Secretary General of the Executive Committee of the Association.

I should mention that the Lesotho Premier League itself was duly established in terms of the above mentioned Section 5 (I) as well as Section 11 (1) and (5) of the Constitution of Lesotho Football Association. The latter section provides as follows:

"11. LEAGUE AND OTHER COMPETITIONS

(1) DIFA shall run the affairs of the district Leagues. LEFA shall run the affairs of the National League and other competitions as LEFA may appoint in the future.

:

:

(5) The Executive Committee shall hold major competitions

> in Lesotho and may establish sub-committees for the purpose. The Executive Committee may delegate the power to run any competition to District and/or other Associations."

Although the term "National League" referred to in subsection 11(1) above has not been defined in the Constitution I am nevertheless satisfied that in the context of Lesotho set up this term includes the Lesotho Premier League which is the most important football league in the country. That is the only meaningful and purposive interpretation that can be assigned to the subsection and the Court is accordingly obliged to make such interpretation.

In like manner the term "other Associations" referred to in subsection 11(5) above must be interpreted to include the Premier League. In this regard I consider that the words "association" and "league" would appear to bear more or less the same meaning as far as the running of football is concerned. Indeed according to the Concise Oxford Dictionary (Ninth Edition) the word "association" means a group of people organized for a joint purpose while the word "league" on the other hand means a collection of people, countries, groups etc combining for a particular purpose or a group of sports clubs which compete over a period for a championship.

In the circumstances I have no hesitation but to reject any notion that the Lesotho Premier League (Competition) Rules and Regulations are unconstitutional. I find that as soon as the Premier League was constitutionally established as indeed it was, it was logical that it should have its own Rules and Regulations in order to run its own affairs.

As indicated earlier the Applicant relies on the abovementioned Section 15 of the Constitution for its proposition that the Premier League Management Committee acted ultra vires its powers in the matter. Well I cannot accept this argument for reasons fully set out above. In any event it is pertinent to observe that Section 15 of the Constitution does not specifically confer any power on the Disciplinary and Protests Committee. It merely speaks of "duties" of the Committee. Accordingly I can find nothing in this section which makes the Protests and Disciplinary Committee the sole arbiter in the matters referred to in the section or which specifically precludes the Premier League Management Committee from acting as it did.

See Cape United Silk Fund Society v Forrest 1956 (4) S.A. 519 AD at 536 per Steyn JA.

In this regard it should be borne in mind that the heading to Section 15 reads "Disciplinary and Protests Committees" (my underlining).

I am inclined to believe that it was the intention of the law maker to have as many disciplinary and protests committees as possible for the proper administration of football in the country. The Lesotho Premier League has set out its own machinery in terms of its Rules and Regulations and must be left alone to discharge its functions without interference save in accordance with the Rules and Regulations themselves. Otherwise the League would be rendered ineffective.

Accordingly I hold that save for strict disciplinary charges as well as properly motivated protests which are specifically excluded from the jurisdiction of the Premier League in terms of Section 20 of the latter's Rules and Regulations the Disciplinary and Protests Committee has no power to hear or determine any matters

emanating from the Premier League.

As earlier stated both the Applicant and the Respondent are members of the Lesotho Premier League. I hold in principle therefore that by agreeing to join the Premier League the clubs comprising the membership of the League including the Applicant must be held to have acknowledged that they would be bound by the Rules and Regulations of the League namely the Lesotho Premier League (Competition) Rules and Regulations. That is the sum effect of the contractual nature of the relationship between the parties.

See Jockey Club of South Africa v Forbes (supra) at 654.

In particular I hold that the Applicant like all other clubs in the Premier League is bound by Section 6 of the Lesotho Premier League (Competitions) Rules and Regulations which vests the Premier League Management Committee with the responsibility for administering, organising and fixturing the League as well as the above mentioned Section 12 thereof which empowers the Premier League Management Committee to make a decision in circumstances such as in the instant case after considering the Referee's report, the clubs' reports as well as the clubs' written submissions if any. There is no provision for oral hearing and as a matter of principle I cannot find anything wrong with this procedure as far as a private body is concerned.

Lastly Mr. Nthethe has conceded as indeed he was obliged to (he has confirmed to the Court that he was a member of the draftsmen to the Lesotho Premier League (Competition) Rules and Regulations), that the founding members of the Premier League Clubs including the Applicant were all represented and did make all the necessary imputes when these Rules and Regulations were made. As

it is these Rules and Regulations are the end product of the very aspirations and expectations of all the Premier League Clubs including the Applicant. I consider therefore that this is more the reason why these Rules and Regulations are binding upon the Applicant which is estopped from seeking to disown them in the manner that it is endeavouring to do.

In all the circumstances of the case therefore I have come to the conclusion that the Premier League Management Committee lawfully acted intra vires its powers and that consequently the Applicant has no prospects of success or bona fide defence in the main application. The Applicant is indeed the author of its own problems.

In the result therefore the Rule is discharged and the application dismissed with costs.

M.M. Ramodibedi

JUDGE

7th November 1997

For Applicant: Mr Nthethe
For Respondent: Mr. Matsau