



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: **994/2022**
Heard: **21/05/2022**
Date available: **15/06/2022**

In the matter between:

NORTHERN CAPE PROS FOOTBALL CLUB

Applicant

and

**SOUTH AFRICAN FOOTBALL ASSOCIATION, NC
UPINGTON CITY FOOTBALL CLUB
REAL MADRID FOOTBALL CLUB
SAFA HOUSE**

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent

REASONS FOR JUDGMENT

Mamosebo J

- [1] This matter came before me as an urgent application on a certificate of urgency by Mr Craig Cothill for the applicant, who could not appear on Friday afternoon, 20 May 2022, because he was in self-isolation. Mr MA Dhlamini of MF Jassat Dhlamini Inc appeared instead. I was not persuaded that proper service on the respondents has been effected and that it be done. All the respondents were duly served later that same evening and the application was heard the following morning, Saturday 21 May 2022 at 10:00. Having

heard argument I dismissed the application with no order as to costs and reserved the reasons which now follow:

- [2] The relief sought by the applicant Football Club was the following:
- "2. *That the play-off match between the second [Upinton City FC] and [Real Madrid FC] third respondents scheduled for Sunday 22 May 2022 in the ABC Motsepe League is postponed pending finalisation of the following:*
- 2.1 *Reviewing and setting aside the first [SA Football Association] and fourth [SAFA House] respondents' decision to:*
- 2.1.1 *refuse to hear the applicant in terms of article 109 of the SAFA Disciplinary Code; and*
- 2.1.2 *schedule the play-off match between the first and second respondents to take place on 22 May 2022.*
- 2.2 *The first and fourth respondents hearing the applicant in accordance with article 109 of the Disciplinary Code and employing the mechanisms set out in articles 110 to 115 to determine:*
- 2.2.1 *if the second respondent's fielding of an ineligible player on 29 January 2022 in a football match against Olifantshoek Young Stars Football Club is incompatible with the regulations of SAFA; and*
- 2.2.2 *If such conduct is found to be incompatible with SAFA regulations, what the sanction ought to be;*
- 2.2.3 *Which teams should compete in the abovementioned play-off and when that play-off should take place.*

3. *Costs of suit in the event of opposition.*
4. *Further or alternative relief."*

- [3] The applicant, Northern Cape Pros FC, is a soccer team and a member of the Northern Cape Professional Football Club affiliated to the South African Football Association (SAFA). It is seeking to review and set aside the decision by the South African Football Association, Northern Cape and SAFA House, in refusing to conduct a disciplinary enquiry invoking article 109 of the SAFA Disciplinary Code; and stopping the play-off between Upington City FC and Real Madrid FC in the ABC Motsepe League scheduled for Sunday 22 May 2022, pending the outcome of the enquiry.
- [4] The first respondent is South African Football Association, Northern Cape, (SAFA, NC) a member of SAFA with its place of business at 2522 Kameeldoring Street, Keimoes. The second respondent is Upington City FC, a voluntary association and a soccer team competing in the ABC Motsepe League, Northern Cape. The third respondent is Real Madrid FC also a voluntary association and a soccer team competing in the ABC Motsepe League. The fourth respondent, SAFA, governs and regulates professional football in South Africa.
- [5] Upington City FC and Real Madrid FC all compete in the ABC Motsepe League in the Northern Cape. The league comprises two streams with nine teams each. The winner in each stream will earn a spot to compete and determine the Northern Cape overall winner. SAFA identified Upington City and Real Madrid as the winners of their respective stream and scheduled their play-off match for Sunday, 22 May 2022, to determine the champion of the League. This forms the main thrust of Northern Cape Pros FC's complaint maintaining that it

ought to have been itself instead of Upington City competing in the play-off.

- [6] The facts are not complicated. On 29 January 2022 Upington City fielded an ineligible player in a match against Olifantshoek Young Stars FC. SAFA, Northern Cape, lodged a misconduct complaint against Upington City couched in the following terms:

"On or about 29 January 2022, the respondent [Upington City FC] contravened the provisions of Rule 26.1 and 26.4 by fielding the suspended player to wit Philane Gumede, My SAFA No. 00F3D, with Jersey No.17, during and under Fixture No. 44, (Upington City FC v Olifantshoek Young Stars).

- [7] The disciplinary hearing was chaired by Mr Moetleetsi Mogwera on 19 February 2022. Upington City FC pleaded guilty to the charge and SAFA accepted the plea and a verdict of guilty was returned accordingly. The following sanction was imposed on the same day:

- 7.1 that in terms of Rule 19.11.8 of the SAFA Competitions Uniform Rules, the Upington City forfeit three points won under the match number 44: Upington City FC v Olifantshoek Young Stars;
- 7.2 Upington City to pay a fine of R5,000.00 (Five Thousand Rand) towards the costs of the Disciplinary Committee within thirty days of the finding and order;
- 7.3 that player Philane Gumede, My SAFA No. 00F3D, with Jersey No.17, observe and complete his period of suspension, that is one game from date of this finding and order; and
- 7.4 that SAFA reimburse the money paid by Olifantshoek Young Stars for the initiation of these disciplinary proceedings within thirty days of this finding and order.

- [8] Aggrieved by the outcome of the disciplinary enquiry Upington City FC lodged an appeal on 11 March 2022 for the setting aside of the SAFA Disciplinary Committee decision. The papers of the appeal did not form part of the papers before me. However, Mr Dhlamini, for the applicant, made the submission that the appeal was successful. Olifantshoek Young Stars, the requester, took the matter to arbitration in terms of Article 81 of the SAFA Regulations and Disciplinary Code¹ before the arbitrator, Adv. T Tshitereke whose award is dated 16 May 2022. The facts before the arbitrator were as stated hereinbefore. Upington City is cited in the arbitration proceedings as the first respondent and SAFA Northern Cape as the second respondent. In its statement of defence Upington City contended that the request for arbitration was lodged outside the seven (7) day period contemplated in Rule 19(2) of the SAFA Competition Uniform Rules "NCP 1"² and prayed that the complaint be dismissed purely on that basis.
- [9] Among the considerations by the arbitrator was that the requester was a participant in the match where the ineligible player was fielded on 29 January 2022 and hence could have lodged the complaint as early as the following day, 30 January 2022 or the latest by 05 February 2022. Notwithstanding the explanation by Mr Coetzee, provincial secretary, SAFA Northern Cape, regarding the computation of dates excluding weekends in the Northern Cape, because of the remote and rural areas in the province, the complaint was only lodged on 08 February 2022, three days out of time. The

¹ Article 81(1) stipulates that all disputes with the decisions of the Appeal Board shall be submitted to the Association for arbitration within seventy-two (72) hours of the decision being made known to the parties in writing, provided that the arbitrator may, on good cause shown, condone non-compliance with this time limit. Such request for arbitration, or a request for direct arbitration in terms of article 33 of the constitution, shall be accompanied by a deposit as specified in the Schedule of Fees.

² Rule 19(1) A team that has not lodged a protest in respect of a game in which it participated, may lodge a complaint with the League, in respect of any act of misconduct/offence allegedly committed. No third party complaint shall be accepted.

(2) The complaint must be lodged in writing within seven (7) days of the incident, and accompanied by a complaint fee, as determined in the Competition Rules and/or SAFA Schedules. The CEO/ designated SAFA official shall dismiss any complaint submitted which does not comply with this Rule.

arbitrator remarked that allowing the teams to lodge their disputes out of time would open an assortment of problems with a detrimental effect on the SAB League, streams and a further ripple effect on SAFA soccer activities. Article 81 (13) of the SAFA Regulations and Disciplinary Code provides that the arbitrator's decision shall be final and binding on all parties.

- [10] Mr Dhlamini submitted that Rule 19(1) excludes the applicant, NC Pros FC, because it did not participate in the game and the Rule further states that no third party complaints are accepted. The NC Pros FC only received the arbitration award on 16 May 2022 at 19:58 and immediately contacted its legal representative for advice. On 17 May 2022, Jassat Dhlamini Inc addressed a letter to SAFA urging the association to invoke Article 109 of the SAFA Disciplinary Code.³ Mr Dhlamini argued that had SAFA invoked Article 109 there would have been an investigation of the complaint contemplated in Article 110 by the secretariat under the Chairman's guidance.
- [11] SAFA responded to NC Pros FC's letter ("NCP5") on Wednesday 18 May 2022 and stated that the internal remedies have been exhausted regarding this complaint and NC Pros FC was advised to either approach the Court of Sports (CAS) or the High Court. On the same day, 18 May 2022, Northern Cape Province Provincial Executive Council (NCP: PEC) addressed a communication to all ABC Motsepe League Teams confirming the date of the positional play-off for the season 2021/2022 as 22 May 2022 at the Showgrounds Postmasburg between Kimberley Real Madrid and Upington City FC at 14:00.

³ Article 109 Commencement of Proceedings

Disciplinary infringements are prosecuted *ex officio*

Any person or body may report conduct that he or it considers incompatible with the regulation of SAFA to the judicial bodies. Such complaints shall be made in writing.

Match officials are obliged to expose infringements which have come to their notice.

- [12] The applicant has to meet the test for interim relief, namely, the well-known requirements for the grant of an interim interdict set out in *Setlogelo v Setlogelo*⁴. The test requires that an applicant that claims an interim interdict must establish (a) a *prima facie* right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted; (c) the balance of convenience favours the granting of the interdict; and (d) that the applicant has no other remedy.
- [13] Mr Dhlamini maintains that the urgency was not self-created because his client, NC Pros FC, could only take steps after receiving the arbitration award on 16 May 2022 and that the prima right relied upon by NC Pros FC is its recourse in terms of Article 109. Should the interim relief not be granted NC Pros FC's irreparable harm would entail its inability to be escalated to play at national level and forfeit the sponsorships that the team stands to gain, counsel contended. He also states that the balance of convenience favours the granting of the interim relief because there will be sufficient time to re-schedule the play-off before the national competition commences around 13 June 2022 and that the prospects of the applicant succeeding in its article 109 are high. The applicant maintains that there was no other remedy but to approach the High Court on urgency.
- [14] Mr Dhlamini further submitted that the impugned decision of SAFA's failure or refusal to invoke article 109 and to schedule the play-off to take place on 22 May 2022 constitutes administrative action within the meaning of the Promotion of Administrative Justice Act (PAJA)⁵. This principle has already been pronounced upon in the unreported judgment by Mbha J, then, *Louisvale Pirates v South*

⁴ 1914 AD 221 at 227

⁵ Act 3 of 2000

*African Football Association*⁶ and *Unterhalter J in Ndoro and Another v South African Football Association and Others*⁷. I am satisfied that the decision falls within the ambit of PAJA and I deem it unnecessary to rehash the principle.

- [15] Rule 1 of the SAFA Competitions Uniform Rules is a good starting point. It reads:

"1. Composition

1.1 *All clubs affiliated (inclusive of their officials, servants, or duly authorised {express or implied} representatives) together with all amateur players registered for the purposes of participating in all the South African Football Association ("SAFA") amateur Leagues {Men's Provincial League, Men's Regional League, Women's National League, Women's Provincial League, Women's Regional League and the SAFA Junior Football (SJF) Leagues – U13 & U15 Boys & Girls} **shall be bound by the Rules contained hereunder and the Regulations hereof, regulating each of the aforementioned SAFA Competitions.***

1.2 *Each SAFA League Competition is made up of teams affiliated to SAFA Local Football Associations registered to participate in them and comprises streams within each geopolitical province ("Province"), SAFA Region and SAFA Local Football Association ("LFA")."*

- [16] Of importance in this entire application is whether Mr Dhlamini is correct in his submission that NC Pros FC is excluded by the provisions of Rule 19.1 in the SAFA Competitions Uniform Rules "NCP1" which stipulate:

"19.1 A team that has not lodged a protest in respect of a game in which it participated, may lodge a complaint with the League, in respect of any act of misconduct/offence allegedly committed. No third party complaint shall be accepted."

⁶ (40614/2011) [2012] ZAGPJHC 78 (4 May 2012) paras 21 - 30

⁷ (16/16836) [2018] ZAGPJHC 74; [2018] 3 All SA 277 (GJ); 2018 (5) SA 630 (GJ)(24 April 2018) at paras 33 and 34

- [17] Mr Dhlamini contended NC Pros FC served a letter on the first respondent, SAFA, Northern Cape, on 18 May 2022 at approximately 11:42 requesting that SAFA invoke Article 109 of the SAFA Disciplinary Code, which stipulates:

"Section 2. Disciplinary Committee

Subsection 1. Commencement of proceedings and investigation

Article 109 Commencement of proceedings

- 1. Disciplinary infringement are prosecuted ex officio.*
- 2. Any person or body may report conduct that he or it considers incompatible with the regulations of SAFA to the judicial bodies. Such complaints shall be made in writing.*
- 3. Match officials are obliged to expose infringements which have come to their notice."*

- [18] The transgression of the player, Philane Gumede, My SAFA No. 00F3D, with Jersey No.17, occurred on 29 January 2022. Article 109 does not specify the timeframe within which an aggrieved party should lodge its complaint. The article, however, enables **"any person"** to report, in writing, conduct contrary to the regulations. It is inexplicable why NC Pros FC did not lodge a complaint any time after the 29th January 2022. Since the complaint would have been conduct related nothing would have prevented SAFA from consolidating the complaints pertaining to the same player for the same transgression and conducting a joint disciplinary enquiry on 19 February 2022. It is common cause that a disciplinary enquiry and a sanction for the said transgression was meted out. The only explanation by NC Pros FC in an effort to justify urgency is that it only learned about the arbitration outcome on 16 May 2022. This explanation is inadequate for the following reasons: (i) not only does it fail to explain the inaction by NC Pros FC from 29 January 2022 but (ii) it also fails to address the reason why the club had to wait for the outcome of the arbitration before invoking article 109.
- [19] A reading of the SAFA rules and regulations paints a picture of the importance of timeframes and why teams competing at set time

allocations must comply, failing which they must fully account for their inability to do so. In my view, the applicant has not satisfied the requirements for an interim interdict for the following reasons:

- 19.1 When one weighs the balance of convenience in restraining the play-offs already set for the following day as opposed to the inordinate delay taken by the applicant in seeking relief, the prejudice would have been greater;
- 19.2 Not only was there an adverse effect on the two streams with nine teams in each stream but also on Upington City FC and Real Madrid FC in the ABC Motsepe League that were already identified as the teams for the play-offs on 22 May 2022;
- 19.3 The offending player, Philane Gumede, has already been punished for his transgression as it appears in the sanction by the chairperson at para 7 above;
- 19.4 The supporters and the organisers were at an advanced stage of hosting and watching the play-off. The irreparable harm on the afore-mentioned would also be greater than on the applicant and also held the risk of unruly protest by supporters for not having had advance notice;
- 19.5 The applicant had an alternative remedy in terms of the said article 109 which it delayed invoking thereby the application on urgency was self-created.

[20] It is for the aforementioned reasons that I dismissed the application and made no order as to costs.



M.C. MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

For the applicant:	Mr MA Dhlamini
Instructed by:	MF Jassat Dhlamini Inc
For the respondents:	None