

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

Case No: 2663/06

CAPE TOWN TYGERBERG FOOTBALL ASSOCIATION	First Applicant
MITCHELL'S PLAIN FOOTBALL DISTRICT	Second Applicant
NORTHERN SUBURBS FOOTBALL ASSOCIATION	Third Applicant
METROPOLITAN FOOTBALL ASSOCIATION	Fourth Applicant

v

SA FOOTBALL ASSOCIATION WESTERN PROVINCE	First Respondent
SOUTH AFRICAN FOOTBALL ASSOCIATION	Second Respondent

REASONS: 22 May 2006

LE GRANGE AJ

In this matter, the Applicants launched an urgent application seeking final relief against the Respondents, in particular against the President and General Secretary of First Respondent, to be committed to a term of imprisonment alternatively to be fined, because Applicants aver they contravened an order of court granted by the Honourable Mr Acting Justice Zondi on 16 March 2006 (*the Order*).

The matter was argued on 23 March instant, after normal court hours. After hearing arguments, I made the following order the next day. "The Application is dismissed with costs." Without giving any reasons therefore.

The reasons now follow:

Zondi AJ granted an interim interdict preventing the First respondent (*SAFA WP*) from *inter alia*;

- 1) Taking any further steps (whether in its own name or that of SAFA Cape Town) to create new “local football associations” (LFA's) to replace existing district associations (including the Applicants); and
- 2) Commencing any competition pursuant to the proposed new LFA structure, other than in accordance with SAFA WP’s Constitution, read together with the Constitution and Rules of the Second Respondent.

The Chairperson of First Applicant, Mr Tulleken, filed the affidavit on behalf of Applicants wherein he avers that the First Respondent together with its elected officials, including the President, General Secretary and other named officials, deliberately and intentionally breached the Court Order by permitting a competition known as the Champions League to be played in the Cape Town Unicity region at Mitchell’s Plain, pursuant to the proposed LFA structure, which is other than in accordance with the First Respondent’s constitution.

The Respondents did not file any papers. It was contended on behalf of First Respondent that the present application should be dismissed on three grounds. First, that the Applicants failed to satisfy the requirements for urgency. Secondly, that the Applicants failed to make the necessary averments that prove that the First

Respondent, or its officials are guilty of contempt of court. Thirdly, there is nothing before this Court to indicate that Mr Tulleken, the deponent to the founding affidavit of Applicants, was authorised to institute the present application on behalf of Applicants.

The requirements for urgency in applications have been dealt with numerous times by the courts. Rule 6(12)(b) of the Uniform Rules of Court provides:

“In every affidavit or petition filed in support of any application under para (a) of this subrule, the applicant shall set forth explicitly the circumstance which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course”.

There are thus two requirements that must be set forth in the founding affidavit in order to satisfy the requirements of the rule. (*Salt and Another v Smith* 1991(2) SA 186 (NM), at 187 A.) Whether an applicant has succeeded in satisfying the requirements for urgency must be determined by the contents of the founding affidavit. (*IL&B Marcow Caterers v Gretermans* SA 1981(4) SA 108(C) at 111A)

In the present matter the Applicants deal with urgency in one paragraph. Mr Tulleken states the following with regard to urgency, in paragraph 19 of the Founding Affidavit;

*‘I respectfully submit that this matter is inherently urgent, that applicants having obtained a Court Order on **16 March 2006** on an*

*urgent basis, in order to prevent football from being played on **18 March 2006**. Fixtures are again scheduled to take place on this weekend, **26 March 2006**, and it is accordingly of critical importance to the applicants and other soccer lovers throughout the Western Cape region, that the first respondent and its officials be held to account’.*

Rule 6(12)(b) entail two requirements, namely the circumstances relating to urgency which has to be explicitly set out and, secondly the reasons why the applicants in this matter could not be afforded substantial redress at a hearing in due course.

In *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin’s Furniture Manufacturers) 1977(4) SA 135(W) at 137F*, Coetzee J held with reference to Rule 6(12)(b), the following;

‘Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.’

The Applicants make no averment of any kind as to why they cannot be afforded substantial redress at a hearing in due course. Reference is, however, made to fixtures that were again scheduled to take place on the weekend of **26 March 2006** and that it is accordingly of critical importance to the Applicants and other soccer lovers throughout the Western Cape region, that the first respondent and its officials be held accountable. An analysis of the circumstances averred by Mr Tulleken in paragraph 19 clearly indicates that the matter is not urgent. The circumstances Applicants aver render the matter urgent simply do not stand scrutiny. This failure is a fatal defect. For this reason alone the application must fail with costs.

However, assuming I am wrong as to the question of urgency, the facts presented in this application do not satisfy the necessary requirements for the Court to find the

Respondents or any of its officials guilty of contempt of court.

The Applicants aver from the Founding Affidavit that the First Respondent has breached paragraphs 2.1.2 and 2.2 of the Court Order.

In paragraphs 13 and 14 of the founding affidavit, Mr Tulleken states the following;

‘[13] I respectfully submit that the matches played on Saturday, 18 March 2006 at Mitchell’s Plain sports field, albeit under the auspices of SAFA Cape Town, was (sic) in breach of paragraph 2.1.2 of the Court Order of 16 March 2006, and was in any event in breach of paragraph 2.2 which declares that the first respondent administers and controls amateur football in the Cape Town Unicity (Cape Town) region, and that consequently the body known as SAFA Cape Town has no jurisdiction to administer and control amateur football in the Cape Town Unicity (Cape Town) region.

[14] I respectfully submit that at the very least those fixtures and/or matches played at Mitchell’s Plain on 18 March 2006 ought to be declared null and void, and of no force or effect, as they had no official match status.

The averments that Respondents are in breach of paragraph 2.1.2 needs closer scrutiny as paragraph 2.2 in the main relates to a declaratory order.

In paragraphs [6] and [16] the following is averred;

[6] This application concerns the fact that the first respondent together with its elected officials, including the President, General Secretary, and other named officials, deliberately and intentionally breached the Court Order of 16 March 2006 by permitting a competition known as the “Champions League” to be played in the Cape Town Unicity (Cape Town) region in Mitchell’s Plain, pursuant to the proposed LFA structure, which is other than in accordance with the first respondent’s Constitution.

[16] I respectfully submit that the conduct of the first respondent, and in particular the officials in the name of the President, the General Secretary, and Messrs Alexander, Williams, and Bailey were fully aware of the Court Order of 16 March 2006, and in blatant disregard of the said Order, nevertheless permitted or allowed the fixtures to take place at Mitchell’s Plain on 18 March 2006, alternatively acted recklessly by not preventing or prohibiting the matches from taking place knowing that the matches would be in contravention of the court Order on 16 March 2006.

The factual averments made by the Applicants, insofar as it relates to paragraph [2.1.2], are not satisfactory to prove that the Respondents are in contempt. It can hardly be suggested that the act of *permitting* as averred by the Applicant’s constitutes a breach of the proscription against the conduct of *commencing* contained in the court order. The word ‘*commence*’ is defined in the Paperback Oxford English Dictionary as ‘*begin*’ whereas the definition of permitting is ‘*give permission to*’.

The Applicants reliance on the words '*permitting and allowing*' is indicative that they failed to prove that the First Respondent together with its elected officials, including the President, General Secretary and other named officials, deliberately and intentionally breached the Court Order by *commencing* a competition known as the Champions League to be played in the Cape Town Unicity region at Mitchell's Plain, pursuant to the proposed LFA structure, which is other than in accordance with the First Respondent's constitution.

It follows that I am not satisfied that the Applicants made out a case for contempt of court.

The Applicants being artificial or corporate entities (*juristic persons*) may not litigate unless their constitution permits such conduct and if they do so permit, then only if the required formalities have been satisfied. See (*Mall (Cape) (Pty) Ltd v Merino Ko-operasie BPK* 1957(2) SA 347 (C) at 351 H); (*Congress of Traditional Leaders of South Africa v Minister of Local Government, Eastern Cape, and Others* 1996(2) SA 898) ; Erasmus, Superior Court Practice at B1-38

Mr Tulleken, in the Founding Affidavit at Paragraph [1] states the following;

'I am the Chairman of the first applicant, and duly authorised to represent it in these proceedings and to depose to this affidavit. I am also authorised by the second, third and fourth applicants to represent those applicants, and to depose to this affidavit on their behalf.'

Unlike an individual, an artificial person like Applicants in this instance, can only function through its agents and can only take decisions by the passing of resolutions in the manner provided by its constitution.

On the papers before me there is no indication by First, Second, Third and Fourth Applicant that they have given Tulleken due authority to institute these proceedings on their behalf. See *Mall (Cape) (Pty) Ltd v Merino Ko-operasie, supra*. Nor is there a resolution to that effect attached to the papers.

It follows that on the papers before me the deponent of the founding affidavit failed to prove due authorisation by the other Applicants and the application must thus fail due to lack of procedural formalities on the side of the Applicants.

Football is one of the major sports code in our Country and has a unifying element to it that is so desperately needed in our communities. It is evident from the founding affidavit of Mr Tulleken that there are serious issues and problems in SAFA – Western Province that need urgent attention from all role-players to remedy some of the problems and mistrust that exists. It is therefore incumbent on all role-players in SAFA-Western Cape to find urgent solutions to the present impasse so that all football lovers, children and adults alike, may enjoy the sport millions around the world adore.

However for the reasons stated the relief sought cannot be granted.

LE GRANGE AJ