

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 2024-076233

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES/NO
23 August 2024	
DATE	SIGNATURE

In the matter between:

THAMES FC

APPLICANT

And

**SOUTH AFRICAN FOOTBALL ASSOCIATION,
NATIONAL**

FIRST RESPONDENT

**SOUTH AFRICAN FOOTBALL ASSOCIATION,
NORTHERN CAPE**

SECOND RESPONDENT

ADVOCATE SITHEMBISO MDLADLA N.O.

THIRD RESPONDENT

KRUGER UNITED FOOTBALL CLUB

FOURTH RESPONDENT

**SOUTH AFRICAN FOOTBALL ASSOCIATION,
MPUMALANGA**

FIFTH RESPONDENT

**SOUTH AFRICAN FOOTBALL ASSOCIATION,
KWA-ZULU NATAL**

SIXTH RESPONDENT

THABANI GUMEDE

SEVENTH RESPONDENT

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on Case Lines. The date and time for hand-down is deemed to be 23 August 2024.

JUDGMENT

MYBURGH, AJ:

- [1] This matter concerns an application to review an award made by the third respondent in his capacity as arbitrator in terms of the disciplinary procedures of the first respondent. The review is one in terms of section 6 of the Promotion of Administrative Justice Act (PAJA).¹
- [2] The matter came before me in the urgent court during the week of 5 August this year – i.e. on the roll which commenced on 6 August. Having familiarised myself with the facts and issues and having heard counsel in relation to the question of urgency, I ruled that the matter was urgent and permitted it to be argued on that basis – that being in accordance with the established practice in this Court in respect of matters of this kind. I refer, by way of example to the decisions in *Polokwane City FC*² and *La Masia FC*³.
- [3] Given the urgency which attaches to the matter, I intend to deal with it as tersely as I consider to be possible without doing injustice to either of the parties or the arguments which were presented. I will, for the same reason, not cite or quote from authorities save to the extent that I consider that to be strictly necessary.
- [4] For the sake of brevity and convenience I will refer to the applicant as "Thames", first respondent as "SAFA", the second respondent as "SAFA NC", the third respondent as "the arbitrator", the fourth respondent as "Kruger FC", the fifth

¹ 3 of 2000.

² *Polokwane City Football Club v South African Football Association and Others; TS Sporting Football Club v South African Football Association and Others* [2021] ZAGPJHC 64 ("Polokwane").

³ *NB La Masia FC v Marumo Gallants FC and Others* [2024] ZAGPJHC 645 ("La Masia").

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respondent as “SAFA MP”, the sixth respondent as “SAFA KZN” and the seventh respondent either as “Mr Gumede” or “the player”.

- [5] As their names indicate, SAFA is the controlling body in respect of the sport of soccer in South Africa and SAFA NC, SAFA MP and SAFA KZN are subordinate organisations responsible for the administration of the sport in their respective provinces. SAFA is in turn, affiliated to *Fédération Internationale de Football Association* (“FIFA”), which entity is responsible for the administration of soccer throughout the world.
- [6] The hierarchy of rules which relate to SAFA and its subsidiaries, to the extent that they are relevant have previously been addressed by this Court. I refer in particular to the decisions in *Ndoro*,⁴ *Polokwane*⁵ and *La Masia*⁶. I will not repeat the findings and observations made in those judgments. Suffice to say that I do not differ in any way from them and that I consider them to be of application *in casu*. It was also not argued otherwise.
- [7] The facts which gave rise to the dispute concern the fielding of Mr Gumede by Kruger FC in a match against the applicant on 21 June this year. While the match was underway a Thames official was informed by someone else who was in attendance that Mr Gumede was not eligible to play for Kruger FC as he was still registered with another club, Royal AM – something which the SAFA rules do not permit. The relevance is that Kruger FC, which won the match, qualified to progress to the next tier or league of organised soccer, whereas Thames did not.
- [8] Thames accordingly lodged a complaint with the SAFA Disciplinary Committee in terms of Rule 19. The gravamen of the complaint was as set out above – i.e. that Mr Gumede had not been eligible to play for Kruger FC at the time as he had still been registered with a previous club, Royal AM. Reliance was placed on rules 14.3 and 24.2.6 of the SAFA Competitions Uniform Rules as well as article 55 of the SAFA Disciplinary Code. The latter stipulates that the penalty for fielding an ineligible player in an official match is forfeiture of the match and a fine of not less than R 6 000.00. Reliance was also placed on article 31 of the SAFA

⁴ *Ndoro and Another v South African Football Association and Others* 2018 (5) SA 630 (GJ).

⁵ *Id Polokwane* n 2 above.

⁶ *Id La Masia* n 3 above.

Disciplinary Code. That article stipulates *inter alia* that a team which is sanctioned with a forfeiture is deemed to have lost the match in question by three goals to nil. The complaint did not find favour with committee, which dismissed it on the same day.

[9] Thames then delivered a notice of dispute as provided for in the SAFA rules. As a consequence of that, the third respondent was appointed to preside as arbitrator. The arbitration was conducted virtually (i.e. by means of audio-visual link) on 22 and 23 June this year. The complaint also did not find favour with the arbitrator, who dismissed it *ex tempore*. Thames responded by requesting reasons. These were furnished in the form of a written award on 29 June. I pause to mention that the proceedings before the arbitrator were in the nature of a broad appeal – i.e. he was required to either uphold or set aside the disciplinary committee's finding in respect of the complaint which served before it, but he was not bound by the record of those proceedings and could instead receive further evidence.

[10] Thames, not being satisfied with the outcome or reasons given, then initiated these proceedings. The substantive relief which was and is sought is an order setting aside the arbitrator's award. The gravamen of the complaint made against the arbitrator is that he dismissed the claim that Mr Gumede had, at the time, still been registered with Royal AM and had, therefore, been ineligible to play for Kruger FC. The formulation followed the formulation referred to by Sutherland DJP *Polokwane*. Thus, it was alleged that the arbitrator's decision fell to be set aside because:

- a. he failed to apply the applicable regulations; and
- b. a mandatory and material procedure or condition had not been complied with; and
- c. his decision was materially influenced by an error of law; and
- d. his decision was taken capriciously or arbitrarily; and
- e. his decision was not rationally connected to the information which was placed before him.

[11] I pause to mention (although it was not argued otherwise) that is accepted law, following *Ndoro*, that disciplinary proceedings of the kind under consideration

constitute administrative action within the meaning of PAJA and that they are accordingly susceptible to review in terms of that statute. I believe it appropriate also to mention at this juncture that the test is essentially whether the arbitrator has done what was required of him or her; it is not sufficient that the court might not agree with the conclusion arrived at – for to apply that test that would be to confuse a review with an appeal.⁷ I will return to this issue when analysing the arbitrator's treatment of the evidence.

- [12] The application was only opposed by Kruger FC. Its defence on the merits was, in a nutshell, that it had placed evidence before the arbitrator which justified a finding that Mr Gumede had been properly registered by it. Its case in that regard had been that Mr Gumede had been registered with another club, Summerfield Dynamos ("Dynamos"), immediately prior to being signed by Kruger FC and that he had been duly released by that club and registered with it. Kruger FC also took issue with the charge that Mr Gumede had not been released from Royal AM prior to joining Dynamos.
- [13] That Mr Gumede had played for Dynamos and been released by that club prior to or simultaneously with his registration with Kruger FC was not disputed. Thus, much of the evidence in the arbitration focused on whether Mr Gumede had been released from Royal AM. In that context, Kruger FC placed reliance on a player registration form dated 31 January 2023 which recorded that Mr Gumede had last played for Royal AM and that he wished to play for Dynamos. That document was signed at the places indicated for the player and for a representative of Dynamos respectively. The form contained a stipulation to the effect that a clearance certificate was required if the player previously had played for a club other than the club seeking registration. In that regard Kruger FC placed reliance on a letter dated 15 January 2023 which was alleged to have been signed by the chairperson of Royal AM, a certain Mr Mpisane. That letter stated that Mr Gumede "*is cleared and free to join any team of His (sic) choice*". This was said to have constituted the necessary clearance certificate.

⁷ Polokwane n 2 above at paras 17 and 32

- [14] Thames's case was that Mr Gumede had gone "AWOL" from Royal AM during April 2023. Proceeding from that premise and relying on the provisions of Articles 4 and 5 of the FIFA regulations for the status and transfer of players and rules 14 and 15 of the SAFA Competitions Uniform Rules, Thames contended that Mr Gumede remained registered with Royal AM for a period of 30 months following the termination of his activity. Assuming that to be so, the implication is that Mr Gumede would still have been registered with Royal AM on the date in issue – i.e. 21 June 2024. Kruger FC contended that the position was regulated by SAFA sub-rule 13.6. That sub-rule stipulates that an amateur player's contract with a club lapses at the end of the year for which he is registered, whereafter the player is free to join any other club provided that he obtains a clearance certificate from his former club. On that analysis, Mr Gumede would not have been registered with Royal AM at the time in question.
- [15] Thames called a certain Mr Makhoba to give evidence in the arbitration proceedings. His evidence was to the effect that he had been in charge of administration at Royal AM during the period under consideration and that he and the club president were the persons who had authority to issue clearance certificates – i.e. Mr Mpisane did not have such authority. He also stated that the signature on the letter of 15 January 2023 was not that of Mr Mpisane. He said that he could say this with confidence as he worked closely with Mr Mpisane and was able to recognise his signature. According to him, Mr Gumede had never asked to be released from Royal AM. He also said that the purported clearance letter had not emanated from Royal AM at all; however, he later said that he did not intend to assert that the document was fraudulent; merely that he had no knowledge of it. Mr Makhoba also testified that he had written a letter to a soccer authority regarding Mr Gumede's irregular release; however, the letter itself was not presented to the arbitrator. As appears from the arbitrator's award, Mr Makhoba also said that he had, at some time, spoken to Mr Mpisane about the matter. His evidence on this issue was not entirely clear. At one point he appeared to assert that Mr Mpisane had denied having signed the document however, as I have said, the evidence on that issue was not entirely clear – this as Mr Makhoba seemed to, at times, conflate or confuse actual signature with authority. Be that as it may, evidence of whatever Mr Mpisane might have said

to Mr Makhoba would have constituted hearsay which, given the centrality of the issue, could not properly have been received if not confirmed by Mr Mpisane - who was not called.

[16] Kruger FC called a SAFA MP official, Mr Mahlangu to testify in the arbitration. His evidence was that he attended to the registration of Mr Gumede with Kruger FC. For that purpose, he had to log on to the SAFA system and upload the relevant documents. As I understood his evidence, the system reflected Dynamos as the player's last club and the registration was successful. Unfortunately, the transcript which formed part of the papers was incomplete – it ended shortly after the commencement of Mr Mahlangu's evidence. That being the case, the arbitrator's summary of that evidence, read with the exhibits, will have to be accepted for present purposes. As the arbitrator's summary shows, the evidence was that the SAFA system reflected Mr Gumede's registration with Kruger FC to have been in order.

[17] Having read the transcript of the arbitration proceedings and having considered the arbitrator's reasons, I do not think that he can be faulted for having rejected Thames's attack on the authenticity of the letter which served as the Royal AM clearance certificate. If Thames had wished to press that charge, then it ought to have called Mr Mpisane to testify, or at least to have explained why he could not be called. For reasons best known to Thames, it failed to do so.

[18] While it is so that the arbitrator identified the authenticity of the letter of 15 January 2023 (i.e. the Royal AM clearance certificate) as the key issue, the true issue was whether Kruger FC had fielded an ineligible player – which was the thrust of Thames's complaint to the disciplinary committee. The issue which the arbitrator identified as the key one is however important in its own right because that was the only basis of the complaint which served before the disciplinary committee. Thames did not, in those proceedings, allege or seek to rely on any other ground of ineligibility. That being so, it was not open to Thames to raise any additional grounds in the arbitration and the arbitrator equally did not have jurisdiction to adjudicate any additional challenges. I mention this specifically as Thames led evidence in the arbitration to the effect that the Mr Gumede's registration with Kruger FC, following his stint with Dynamos had also been

tainted by certain irregularities of a technical nature. In my view that evidence was irrelevant as it had not formed part of the original complaint and hence fell beyond the arbitrator's remit. That being so, the arbitrator's failure to find in favour of Thames on that issue cannot serve as a ground for interfering with his award.

[19] As an aside, I must say that I question whether that a finding in favour of the complainant would have been competent or appropriate absent proof of knowledge of what could be described as a defect in title on the part of Kruger FC. While it is so that the SAFA rules place an onus on a club to ascertain a prospective player's status before signing him or her, I do not think that it can be sufficient to show simply that there was some irregularity in the chain of transfers or registrations – which is essentially the position which Thames contended for. The position is, to my mind, similar to that which pertains in respect of the purchase of a motor vehicle – i.e. a purchaser would, in the ordinary course, be entitled to rely on information of ownership reflected on the Natis system. Likewise, a club would, in the ordinary course, be entitled to rely on the information reflected on SAFA's system or on communications received from that body. In this regard, it is to be borne in mind that the sanction is one which is imposed on the club rather than a particular player, and which accordingly affects all of the club's members and stakeholders.

[20] I am accordingly of the view that the attack on the arbitrator's award must fail.

Order

[21] The application is dismissed with costs.



G S MYBURGH
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES:

For the Applicant:

J. Gautschi SC

Instructed by:

MF Jassat Dhlamini Inc.

For the Fourth Respondent:

L.E. Thobejane

Instructed by:

Botha, Massyn & Thobejane Associated
Attorneys

Date of Hearing:

06 August 2024

Date of Judgment:

23 August 2024