

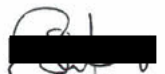


**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2025-097167

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

12/08/25
DATE


SIGNATURE

In the matter between: -

HIGHLANDS PARK FOOTBALL CLUB

Applicant

and

**SOUTH AFRICAN FOOTBALL ASSOCIATION
ADV TSHIFHIWA TSHITEREKE N.O
NB LA MASIA FOTTBAL CLUB
GAUTENG FOOTBALL ASSOCIATION
GOMORA UNITED FOOTBALL CLUB
ZIZWE UNITED FOOTBALL CLUB
HANOVER PARK FOOTBALL CLUB
MIDLANDS WANDERERS FOOTBALL CLUB
AFRICAN WARRIORS FOOTBALL CLUB
THAMES FOOTBALL CLUB**

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent
8th Respondent
9th Respondent
10th Respondent

NAAS THE BEES FOOTBALL CLUB	11 th Respondent
AMAVARRA FOOTBALL CLUB	12 th Respondent
FC RAVENS FOOTBALL CLUB	13 th Respondent
SINENKANI FOOTBALL CLUB	14 th Respondent
MATTA MILAN FOOTBALL CLUB	15 th Respondent
SUNRISE FOOTBALL CLUB	16 th Respondent
KAKAMAS JUVENTUS FOOTBALL CLUB	17 th Respondent
IBM FOOTBALL CLUB	18 th Respondent

JUDGMENT

MFENYANA J

Background

[1] This is an urgent review application. The applicant, Highlands Park, a football club participating among others, in the Gauteng ABC Motsepe League, seeks to review and set aside an arbitration award issued by Adv Tshifhiwa Tshitereke (the arbitrator) on 19 June 2025, with reasons provided on 27 June 2025.

[2] On 19 June 2025, the arbitrator, acting under the auspices of the South African Football Association (SAFA) upheld a referral by the third respondent, NB La Masia Football Club (La Masia) and found that the fielding of a player known as Chigaemezu Franklin Ogbonna (Mr Ogbonna) by Highlands Park was a violation of rule 11.1 read with Rule 12.5 of the SAFA Uniform Rules. The arbitrator ordered that Highlands Park should forfeit all points in which Mr Ogbonna had participated during the ABC Motsepe League-

Gauteng, for the 2024/2025 season, in violation of the above rules.

[3] The application is styled as Parts A and B. Part A was disposed of on 30 June 2025, in a judgment by Fisher J when the learned judge struck the matter off the roll on the basis that it was not properly and urgently prosecuted by the applicant.

Urgency

[4] The matter returns to this court for the hearing of the second part of the relief (Part B), on the same papers, accordingly supplemented by the applicant. Part B was initially set down for hearing on 22 July 2025 before Mahosi J who removed the matter from the roll as the learned judge was not satisfied with the issue of service. I was not pointed to any order made by Mahosi J, however I accept this to be so as both parties are of the same understanding.

[5] The applicant contends that despite the striking off of Part A, the matter remains urgent as the season commences on 11 August 2025, and the relief sought would be rendered moot if the matter were to be heard at a later date. This is the same reason advanced in the founding papers when the matter was to be heard on 22 July 2025. The applicant's explanation in this regard is that the commencement date was shifted from the initial starting date of 1 August 2025 to 11 August 2025. This was apparently partially due to an application instituted by the fourteenth and seventeenth respondents against some of the respondents in the present matter, in the Eastern Cape Division of the High Court in Makhanda, application to be heard on 5 and 6 August 2025. Mr Manca,

submitted on behalf of the applicant that the Makhanda matter has a bearing on these proceedings, a view not shared by Mr Thobejane who appeared on behalf of the third and fifth respondents.

[6] When the matter was removed on 22 July 2025, it had similarly been brought on an urgent basis pursuant to a notice of motion dated 23 June 2025, delivered at the start of the proceedings. The urgent relief sought by the applicant in Part B includes an order setting aside and substituting the decision of the SAFA Appeal Committee. This was however abandoned at the hearing of this matter.

[7] The decision of the Appeal Committee was delivered on 27 May 2025 upholding La Masia's appeal against Highlands Park in respect of Mr Ogbonna. Highlands Park lost 3 points for its match with La Masia, played on 21 February 2025 in which Mr Ogbonna was fielded. The appeal Committee directed SAFA to conduct an investigation in relation to the matches in which Mr Ogbonna participated.

[8] The respondents, on the other hand, contend that the matter is not urgent as this court has already struck off Part A on that basis. They assail the applicant's failure to engage with the merits of the matter, which they aver, are inseparable from the issue of urgency in this matter. The respondents further aver that the relief is moot as the playoffs have already taken place without the applicant's participation. In this regard, it is worth stating that the relief for the suspension of the playoffs was set out in Part A. Part B has very little, if at all, to do with that, and is concerned with reviewing the arbitration award.

As for the applicant's contention that it faces relegation, the respondents aver that this is an afterthought as the applicant makes no mention of this in the main application and only raised this for the first time in its supplementary affidavit.

[9] While the parties are at odds about the urgency of the matter for the reasons they have advanced, they seem to agree that a delay in the outcome of these proceedings would likely prejudice, not just the parties to this dispute, but other clubs, and may have a cascading effect on the rest of the league. As the respondents aver, preparations are at an advanced stage and the outcome envisaged by the applicant would wreak havoc on the league. I presume that the applicant is equally eager to have the matter determined. Undoubtedly, this matter is of considerable importance to all the parties involved. To whatever extent the determination of this matter may bring the dispute between the parties close to finality, it is worth a shot. For that reason, I conclude that the truncated timeframes within which this application was enrolled are justified in the circumstances of this matter.

The dispute

[10] The applicant assails the award made by the arbitrator on various ground predicated on section 6 of PAJA. the following grounds:

- 10.1. that section 6(2)(b) of PAJA was not complied with.
- 10.2. that the decision of the arbitrator was influenced by a material error of law.
- 10.3. the action was procedurally unfair.
- 10.4. the action was taken for a reason not authorised by an empowering provision.

10.5. irrelevant considerations were considered, and relevant considerations were not taken into account.

10.6. that the decision is reviewable in terms of section 33 of the Arbitration Act¹.

[11] Thus, the applicant avers that the arbitrator misconstrued his duties as an arbitrator and exceeded his powers, which amounts to a gross irregularity

[12] The matter turns on the procedure followed by La Masia in bring the complaint before the arbitrator, outside of the 72 hours stipulated in the SAFA disciplinary code. Highland Park further states that the arbitrator should not entertained the dispute regarding the registration of Mr Ogbonna as it was not brought within 14 days as prescribed in the Uniform Rules of SAFA. This is a mandatory provision which was not complied with by the arbitrator and set the decision outside of the authority of the arbitrator.

[13] The errors of law pointed out by the applicant relate to the sanction imposed that Highlands Park should forfeit points in respect of all the matches in which Mr Ogbonna was involved as well as the arbitrator's interpretation of the SAFA Rules. The criticism is that the SAFA Rules do not provide for automatic forfeiture in the absence of a valid protest or a disciplinary charge. In this regard, Mr Manca argues that the arbitrator sat as both judge and prosecutor whereas the SAFA regulatory framework distinguishes between arbitral powers which pertain only to resolving disputes and disciplinary powers

¹ Act 42 of 1965.

to impose sanctions after due process.

[14] On the other grounds of review, Highlands Park decries the process followed by the arbitrator, that it was not afforded an opportunity to make representations in circumstances where a forfeiture was ordered in matches where there were no protests. Finally, Highlands Park avers that the arbitrator did not appreciate the prejudice it would suffer if the matches were forfeited and the disruption its decision would have to the league table.

[15] This averment overlooks the fact that the decision to investigate all the matches in which the player participated came from the appeal authority. The pre-arbitration minute referred to by the respondent records that the arbitrator would deal with whether he had the necessary jurisdiction to deal with the dispute and whether the dispute should be dismissed for lateness. Mr Manca says that the arbitrator was not called to impose a sanction in respect of the 28 fixtures in which Mr Ogbonna was fielded.

[16] The respondents deny that the arbitrator acted *ultra vires* his powers, stating that article 81 of the SAFA disciplinary code confers powers to the arbitrator to determine disputes from the Appeal Committee, contrary to the applicant's contention. He added that the dispute had already been determined by the Appeal Committee. He further submitted that the arbitrator is not bound by the minute of the pre-arbitration but by the rules of SAFA. In particular, Mr Thobejane relied on article 81(11) which states that "the powers of the arbitrator shall be wide and shall be determined by the arbitrator at his sole

discretion.”

[17] As regards procedure, Mr Thobejane submitted that the ineligibility of a player is sanctioned by law under article 55 of the disciplinary code. Notably, he submitted that it is not in dispute that Mr Ogbonna is ineligible and despite Fisher J pointing out to Highlands Park that they are not dealing with the facts, they still refuse to do so even in these proceedings. He referred to the judgment of Sutherland DJP in *Polokwane City*² to drive home the point that ‘diversion of approach and seeming inconsistency in outcome is part of the price to be paid for final and binding arbitration’.³ The remainder of that paragraph records that - *“the critical question is never about ‘correctness’ but only about whether the arbitrators fulfilled their mandate properly. Where value judgments about fact-specific occurrences are part of that mandate ‘consistency’ to the satisfaction of all is illusory”*.

[18] I consider this extract by Sutherland DJP to be fitting in the circumstances of this application. The common cause facts are that Mr Ogbonna was proven to be ineligible and sanctioned by the Appeal Committee. The same Appeal Committee ordered an investigation into all the other matches in which the player had participated. It defies logic why the outcome should be any different, but I digress. Highlands Park is fully aware of this and takes no issue with it. Its discord is with who was to mete to this sanction. One

² *Polokwane City Football Club v South African Football Association and Others; TS Sporting Football Club v South African Football Association and Others* (25191/2021; 26189/2021) [2021] ZAGPJHC 64 (15 June 2021).

³ *Ibid*, para 32

has to wonder what dispute served before the arbitrator if the determination of the very issue that was outstanding at that stage, was beyond his reach.

[19] The fact of the matter is that the decision of the SAFA Appeal Committee remains and is binding on the parties. I do not understand the applicant to be saying that it would yield different results if implemented by SAFA as opposed to the arbitrator who acted on instructions from SAFA. I also do not agree that the arbitrator acted outside his powers in making the award. As stipulated in the award, the decision on the ineligibility of Mr Ogbonna was made by the appeal authority who also ordered that Highlands Park was to forfeit the points for the match of 21 February 2025 with La Masia. It does not seem that Highlands Park takes any issue with this finding. The real issue seems to be the fact that Highlands Park is to forfeit points on the 28 matches in which Mr Ogbonna participated.

[20] It is common cause that quite apart from the referral by La Masia of the decision of the Appeal Committee to arbitration for enforcement, when SAFA Gauteng provided the investigation report to the arbitrator on 8 June 2025, it included a request for the arbitrator to make a ruling in relation thereto. There can thus be no suggestion that the arbitrator exceeded its powers. To my mind, that should be the end of the story.

Conclusion

[21] In the final analysis, there can be no merit to any suggestion, the applicant has failed to prove any irregularity in the decision of the arbitrator. The application stands to be dismissed.

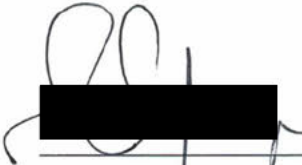
Costs

[22] There appears to be no reason that the general rule that costs should follow the result should not apply. During the hearing of the matter, Mr Thobejane submitted that the applicants should be ordered to pay the costs of the application, inclusive of the costs of 22 July 2025 when the matter was removed for service. I agree. The issue of service of the application falls within the responsibility of the applicant. Where such service is not to the satisfaction of the court, there can be no reason to saddle the respondents with costs.

Order

In the result, I make the following order:

- a. The application is dismissed.
- b. The applicant shall pay the costs of the application, including the costs of 22 July 2025 on scale C.


S MFENYANA
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

For the applicant : Adv B Manca SC assisted by Adv B Braun
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For the 3rd and 5th respondent : Mr. L Thobejane instructed by Botha Massyn &
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Date of hearing : 5 August 2025
Date of judgment : 12 August 2025