



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 85186/25

Reportable

In the matter between

ZIZWE UNITED FOOTBALL CLUB

Applicant

AND

**THE SOUTH AFRICAN FOOTBALL ASSOCIATION
WESTERN CAPE**

1st Respondent

**THE SOUTH AFRICAN FOOTBALL ASSOCIATION
HANOVER PARK FOOTBALL CLUB**

2nd Respondent

KAKAMAS JUVENTUS FOOTBALL CLUB

4th Respondent

MIDLANDS WANDERERS FOOTBALL CLUB

5th Respondent

AFRICAN WARRIORS FOOTBALL CLUB

6th Respondent

NAAS THE BEES FOOTBALL CLUB

7th Respondent

THAMES FOOTBALL CLUB

8th Respondent

HIGHLANDS PARK FOOTBALL CLUB

9th Respondent

LA MASIA FOOTBALL CLUB

10th

Respondent

AMAVARARA FOOTBALL CLUB

11th

Respondent

FC RAVENS FOOTBALL CLUB

12th

Respondent

SINENKANI FOOTBALL CLUB

13TH

Respondent

MATTA MILAN FOOTBALL CLUB

14TH

Respondent

SUNRISE FOOTBALL CLUB

15TH

Respondent

MSIMELELO MABUTHO

16th

Respondent

CHRISTOPHER KISTOOR

17th

Respondent

KETENG QHU

18th

Respondent

CHESLYN ADAMS

19th

Respondent

Date of Hearing : 26 June 2025

Date of Delivering : 03 December 2025

ORDER

1. That the arbitration award, handed down by Adv. Andre' Oosthuizen SC on 23 June 2025 ('the award') and attached hereto as annexure 'A', is hereby made an order of this honourable Court.
2. That the first and second respondent are directed to comply with the award and take all necessary steps to ensure that the rematch between the applicant and the third respondent as provided for therein take place on or before 30 June 2025.
3. That, pending the outcome of that match to be replayed in terms of the award between the applicant and the third respondent, in order to determine the Western Cape Provincial winner of the Western Cape ABC Motsepe League 2024/2025, the first and second respondents are directed to suspend the matches of the National Championships of the ABC Motsepe League 2024/2025 involving the Western Cape Provincial winner of the Western Cape ABC Motsepe League 2024/2025.
4. That the first and second respondents be directed to pay the costs of this application, jointly and severally, on the scale as between attorney and client, which costs are to include the costs of two counsel, on Scale C.

JUDGMENT

THULARE J

[1] This was an urgent application to make an arbitration award an order of court, to direct the first respondent to comply with the award and take all necessary steps to ensure that the rematch between the applicant and the third respondent as provided in the award took place on or before 30 June 2025, and that pending the outcome of that match which would determine the Western Cape ABC Motsepe League 2024/2025 the first and second respondent be directed to suspend the matches of the National Championships of the ABC Motsepe League 2024/2025 involving the Western Cape winner. Only the first respondent opposed the application and filed a counter application. The scope of the first respondents opposition and what it sought in the counter-application was limited to whether paragraphs 49.1, 49.2 and 49.3 of the arbitration award were sustainable as a matter of law. In 49.1 the award had annulled the match between applicant and third respondent. In 49.2 the award was for that match to be replayed within seven days of the date of the award with the proviso that if it was impossible, the parties could approach the arbitrator for an extension. In 49.3 the award was for the referee and match officials to be appointed by Mr Luvuyo Pupuma, with the proviso that if it was impossible, then the referee and match officials were to be appointed by the second respondents National Referees Committee.

[2] The first respondents case was that it was not bound by the arbitration agreement. Furthermore, it was argued that the arbitration agreement nowhere

explicitly empowered the arbitrator to annul the match played on 17 May 2025 and that the arbitrator did not rely upon the arbitration agreement as the foundation of his terms of reference and/or powers to impose a sanction. The first respondents case was that its representatives at the arbitration indicated that the appropriate remedy if the applicant succeeded was an issue, which they proposed to deal with in a concise manner, but that they did not address the question of remedy during the oral argument to the arbitrator. They did not concede that the arbitrator had the power to impose any sanction, let alone an annulment of the match between the applicant and the third respondent. First respondents case was that third respondent's representatives as well did not concede that the arbitrator has the power to impose a sanction, more particularly that of annulling the match. Third respondents representatives had at the arbitration submitted that to the extent that it was suggested that in terms of Article 57.1.4 an arbitrator in a disciplinary matter may order the return of an award, which could extend to include the result of a match and, by implication, a potential rematch, then it was submitted that that was simply not enough. Third respondent had submitted that the applicant had not provided any clear provision within the applicable Rules, nor cited any legal authority, to substantiate the view that the arbitration process permitted the type of relief then sought, which was a rematch. The first respondent in its opposition to the order sought before this court submitted that neither them or the third respondent either explicitly or by necessary implication enlarged upon the terms of reference as embodied in the order of court dated 10 June 2025, which did not allow for the imposition of any sanction by the arbitrator. According to the first respondent, in none of the exchanges between the parties was there any agreement either explicitly or implicitly that the arbitrator possessed the power to impose a sanction, more particularly, that of annulling the match between the applicant and the third respondent.

[3] It was submitted that based on all the material placed before the arbitrator, the only issues which called for resolution by the arbitrator were those mentioned in the court order of 10 June 2025, and that those issues were not enlarged upon agreement between the parties, more especially on the part of the first and third respondent. It was also argued that the dispute referred to arbitration in terms of the court order of 10 June 2025 did not in any way allow the arbitrator to annul a match and/or the result of the match played between Zizwe and Hannover Park. It was the first respondent's case that the second respondent's disciplinary code did not make provision for the annulment of a game or the results of a game, following upon an invalid appointment of a referee and other match officials to the said game, with reference to articles 2, 10 and 11 of that code). In the counterapplication the case was that paragraphs 49.1, 49.2 and 49.3 of the award exceeded the powers of the arbitrator and accordingly those paragraphs be expunged from the award; that the court refuse to make the award an order of court and refuse to grant the interim interdict on the basis that it will serve no purpose.

[4] The applicant (Zizwe) and the third respondent (Hannover Park) each won their league streams, and the winner of their game would be the winner of the league in the Western Cape province and would compete in the national championship league in Gauteng in the week starting 30 June 2025. Zizwe declared a dispute in relation to the match to determine the winner, which match was played on 17 May 2025. That match full time score was a 1-all draw and Zizwe lost in the penalty shootout. The dispute that Zizwe lodged in terms of SAFA regulatory framework was that Luvuyo Pupuma was SAFA's Provincial Coordinator of the Western Cape ABC Mootse League for the 2024/2025 season and was the person authorized and

require to appoint the match officials for the finals. Pupuma did not appoint the match officials for that match, which was in contravention of the SAFA regulatory framework. The match officials were appointed by a person unknown and who was not designated as contemplated in the SAFA regulatory framework and as a result the appointment of the match officials were *inter alia* unlawful, invalid or irregular and that the match officials who officiated the finals did so unlawfully. The dispute was further that the match officials who officiated that final match did so in a manner that was biased in favour of Hanover Park and unreasonable and irrational in relation to Zizwe. Without limiting the conduct of the match officials to one incident, Zizwe gave an example of what it alleged was valid goal for Zizwe which was disallowed by flagging an offside against Zizwe, and Zizwe alleged that it had footage demonstrating a number of such incidents which it would provide. Zizwe also alleged the inescapable conclusion that the match officials were unlawfully, invalidly and/or irregularly appointed for purposes of ensuring that Zizwe did not win the match and that objective, given the conduct of the match officials, was achieved. Zizwe in the dispute alleged that the unlawful, invalid and/or irregular appointment of the match officials and their conduct in the match went against the principles of fair play espoused in the FIFA regulatory framework, which bound SAFA and SAFA WC and further alleged that such conduct compromised, tainted and tarnished the integrity of the outcome of the match. Zizwe's view was that the facts underlying the complaint, that is, the appointment of match officials contrary to SAFA prescripts and the way the match officials officiated that match, evidenced corrupt activity. In its prayers in the dispute, given the fact that the integrity of the outcome of the match was compromised, tainted and tarnished, Zizwe sought *inter alia* that the match be replayed and that SFA Provincial Referees Coordinator of the Western Cape ABC Motsepe League appoint match officials for the match to be replayed. In response, SAFA WC suspended Zizwe from the league.

[5] On 10 June 2025 Zizwe obtained an urgent court order against the respondents which declared that it could refer its disputes, including its suspension, the appointment of the match officials and the conduct of that match by the match officials, for urgent arbitration. The second respondent (SAFA) did not oppose that application and was aware of the allegations Zizwe made which formed the basis of its dispute, including what Zizwe prayed for as a resolution to the dispute. In that order the first respondent (SAFA WC) was directed to convene an arbitration to deal with these disputes within 3 days of that order. That order applied to SAFA as well, which was cited, served and elected not to oppose that application. On 11 June 2025 SAFA WC informed Zizwe and Hannover Park, by an email through its legal representatives, that it will abide any agreement reached between them regarding the appointment of an arbitrator. The agenda for the pre-arbitration meeting and an arbitration agreement draft was sent to Zizwe, Hannover Park and SAFA WC on 12 June 2025. On the same day SAFA WC raised concerns about the arbitration agreement still making reference to it being a party to that agreement, given that SAFA WC had by then lifted the suspension of Zizwe and the limits of Hannover Parks involvement. These issues were referred to and discussed at the pre-arbitration meeting where SAFA WC actively participated, which was held on the afternoon of 12 June 2025. Most importantly, SAFA WC did not dispute, at the pre-arbitration hearing, when it was pronounced, that the disputes were suspension of Zizwe by SAFA WC and another dispute was about the sanction in relation to the match dispute.

[6] By 16 June 2025, SAFA WC raised issue with its characterization as a party to the match dispute. It proposed that the arbitration agreement be amended to reflect that they were not a party to the match dispute, as they like Hannover Park, were

merely an interested party on the outcome of the arbitration and had elected to abide by the outcome of the arbitration. SAFA WC filed a notice to abide in part, dated 15 June 2025. That notice reads as follows:

BE PLEASED TO TAKE NOTICE that the First Respondent:

1. Does not oppose the substantive relief sought by the Requestor in this arbitration and accordingly abides the decision of the Honourable Arbitrator insofar as the substance of the relief is concerned.
2. However, the First Respondent reserves its right to be heard and to make submissions on the issue of costs.
3. The First Respondent accordingly opposes any relief sought by the Requestor to the extent that it seeks a costs order against the First Respondent.
4. The First Respondent shall submit argument or evidence, if necessary, in respect of the issue of costs at the appropriate stage of these proceedings.

[7] On being asked by Zizwe to clarify their position, SAFA WC indicated their view that the question of a potential remedy fell squarely within the purview of SAFA given that any such remedy could have material implications for SAFA and the integrity of the National Championship. SAFA WC indicated that it had again extended an invitation to SAFA to participate in the arbitration and it remained unclear to SAFA WC whether SAFA would participate, and that SAFA did not respond or elected not to participate. SAFA WC requested the indulgence of Zizwe and Hannover Park to make limited submissions solely on the issue of a possible remedy, which they intended to make in their written submissions and that they would also address the issue of costs in the arbitration. On 17 June 2025 the draft arbitration agreement, which recorded the amendments proposed by SAFA WC as well as other changes, including changes to the arbitrator's rate, and the costs

related to the venue, were provided to Zizwe, Hannover Park and SAFA WC. SAFA WC, on the same day through its representatives, upon receipt of the draft, proposed that the following be included in the agreement (1) that the suspension of Zizwe as uplifted by SAFA WC and it was now moot and no longer formed a live dispute between the parties and that reference to the suspension be removed from the draft arbitration agreement and that it be confined to the remaining issues in dispute (2) that SAFA WC was not a party to the match dispute concerning the appointment of the match officials and that SAFA WC sought to be recorded in the draft arbitration agreement as an interested party, similar in status to Hannover Park but only to the extent of its limited involvement and factual contribution and (3) that SAFA WC had elected to abide by the outcome of the arbitration in respect of this issue and did not intend to make submissions on the merits, save for the issue of costs, if necessary. Therefore, the parties to the drawn arbitration agreement were Zizwe as requestor, SAFA WC was the first respondent and Hannover Park was the second respondent. Zizwe cannot be faulted for not citing and serving SAFA with the arbitration papers. SAFA had elected not to be a party to the live dispute at the time.

[8] The arbitration agreement provided that the arbitration will be held in accordance with the terms and conditions as set out in the court order, the relevant provisions of SAFA statutes and the SAFA disciplinary code. The parties agreed that the parties to the match dispute pertaining to the appointment of match officials were Zizwe and SAFA WC although Hannover Park had an interest in the sanction and any further remedy, determination or relief which the arbitrator may decide on. The parties agreed that Hannover Parks involvement and participation in the arbitration would be more limited to that of SAFA WC. SAFA WC on the other

hand indicated that it was merely an interested party on the outcome of the arbitration and had elected to abide by the outcome of the arbitration on the dispute concerning the match officials. The parties also agreed that the suspension of Zizwe was lifted by SAFA WC on 13 June 2025 and that the suspension did not form part of the arbitration as it was moot. Of further relevance was that the parties agreed on further terms which included the identity of the arbitrator, the arbitrators agreed charge, liability for the charge and that the arbitrator shall finally determine the disputes. The arbitration proceedings were conducted on 18 June 2025. Zizwe, Hannover Park and SAFA WC participated in the arbitration proceedings. All three submitted written submissions on the 18th and also thereafter including up to 22 June 2025 but before the award. Zizwe and Hannover Park and also made oral submissions. Zizwe, Hannover Park and SAFA WC submission included an address on the issue of the remedy sought by Zizwe. SAFA WC did not sign the arbitration agreement. Zzwe and Hannover Park signed the arbitration agreement after the arbitration proceedings were conducted and in the course of the three parties making further submissions to the arbitrator.

[9] Clause 3.3 of the arbitration agreement read as follows:

3.3 The arbitration will be conducted in accordance with the court order, the relevant provisions of the SAFA statutes particularly Article 58.4 thereof, and the relevant provisions of the SAFA Disciplinary Code, particularly Article 81 thereof.

On the powers of the arbitrator in clause 5, clause 5.2.2 and 5.2.9 read as follows:

Without detracting from the generality of the foregoing, the Arbitrator shall have the power to:

5.2.2 rule on his own jurisdiction, including rulings on any dispute in regard to the existence or validity of this Arbitration Agreement or the scope thereof.

5.2.9 generally, to exercise such powers and duties as are allowed to him by this Agreement, any other agreement of the Parties or by the laws of the Republic of South Africa and as are required for the conclusion of these proceedings, where this Arbitration Agreement or the rules governing the proceedings are silent in any respect.

On the governing law, clause 11 reads as follows:

11.1 The Arbitrator shall apply the laws of the Republic of South Africa to the determination of the disputes between the Parties, including without limit, the South African law of evidence.

11.2 The arbitration proceedings shall, unless otherwise agreed or stipulated in this Arbitration Agreements, be subject to the SAFA Disciplinary Code.

Clause 81 para 11 of the SAFA Regulations, Disciplinary Code, read as follows:

Article 81 Arbitration

11. Notwithstanding anything contained in these Rules, the powers of the arbitrator shall be wide and shall be determined by the arbitrator at his sole discretion.

[10] The arbitrator found that the match referee and officials for the playoffs on 17 May 2025 were to be appointed by Pupuma. The arbitrator found that Pupuma made no such appointment. The arbitrator found that those officiating at the match were not validly appointed. Neither SAFA nor SAFA WC had placed any valid reason as to why they did not adhere to the rules of the Motsepe League as regards the appointment of match officials for the match on 17 May 2025. Moreover, SAFA WC had filed an opposing affidavit positively asserting that Pupuma had not been officially appointed as SAFAs Provincial Coordinator of the Western Cape ABC Motsepe League. This was untrue and there was in fact an appointment letter to that effect, which SAFA WC later conceded. The arbitrator found that annulment of the match was a logical remedy which would flow from the irregular appointment of the referee and match officials. It was found that it would be

unsatisfactory and unacceptable that a match could be played in breach of relevant competition rules and annulment was found to be an appropriate remedy. The results of the playoff match between Zizwe and Hanover Park played on 17 May 2025 at Stellenbosch were annulled and the match was ordered to be replayed within seven (7) days of the date of the award, with a proviso that if that was not possible the parties could approach the arbitrator for an extension of the period. SAFA WC.

The issue that SAFA WC was not bound by the arbitration agreement.

[11] In *Fassler, Kamstra & Holmes v Stallion Group of Cos (Pty) Ltd* 1992 (3) SA 825 (WLD) at 828D-H it was said:

In England the Arbitration Act is worded in a similar way to our statute in its basic requirement that the agreement has to be in writing. In *Hickman v Kent or Romney Marsh Sheep Breeders Association* [1915] 1 Ch 881 at 901-3 and *Anglo-Newfoundland Development Co v Newfoundland Pine and Pulp Co* [1920] 2 KB 214 (CA) at 223 the Court held that the agreement need not be signed by both parties. See also Halsbury's *Laws of England* 4th ed vol 2 at 267 para 521, where the following appears:

'The agreement need not, it seems, be signed by the parties, it being sufficient that a party adopted and acted on it, although he may not have signed it.'

I was referred to three pre-Union arbitration statutes which all referred only to a written agreement, and in none of them was it a requirement that the agreement be signed by the parties. (See s 2 of the Cape Arbitrations Act 29 of 1898, s 1 of the Natal Arbitration Act 24 of 1898 and s 2 of the Transvaal Arbitration Ordinance 24 of 1904.)

The Legislature has in a number of statutes required certain formalities to be complied with if the agreement between the parties is to be enforceable. The sale of land requires the agreement to

be in writing and signed by the parties. There are similar statutory provisions relating to the assignment of copyright or credit sale agreements. In other words, where a written agreement is to be signed by the parties, the Legislature uses words clearly indicating the need to achieve that end. The statutory arbitration provisions in the Transvaal, Natal and Cape or, for that matter, in the present Arbitration Act, have never used the words 'signed by the parties' in relation to a written agreement.

My view in consequence is that it is not necessary for the parties to sign the written agreement. It is enough if they have adopted and acted on it.

Having regard to all the correspondence between the parties, there was an arbitration agreement in writing between Zizwe, Hannover Park and SAFA WC. All three parties adopted and acted on the terms of the agreement. SAFA WC attended the pre-arbitration proceedings, made input to the terms of the draft arbitration agreement, which were incorporated into the written agreement, and made submissions to the arbitration proceedings on the dispute brought for arbitration. It did not avail SAFA WC when it did not like the outcome, to deny that the award was not enforceable against them for want of their signature and on that ground, amongst others, to seek an order that the award be set aside. In *Mervis Brothers v Interior Acoustics and Another* 1999 (3) SA 607 (WLD) at 610D-G the following was said:

In terms of s 1 of the Arbitration Act 42 of 1965, an agreement providing for reference of a dispute to arbitration is required to be in writing. Generally such a provision postulates signature by both parties. However, a document may constitute an agreement in writing even though it is signed by only one party. That the signature of one party is lacking does not matter, depending on the circumstances of the case. The test is whether the parties have deliberately intended to record their agreement in writing and have shown that the document so produced constitutes the agreement between them. *Union Government (Minister of Finance) v Chatwin* 1931 TPD 317.

In the present case the second document was sent in response to the first and constituted a counter-offer to the proposal of arbitration. It was received without demur and the parties

proceeded to arbitration. By its conduct the appellant accepted the terms expressed therein. In my opinion it is clearly part of a written agreement within the meaning of s 1 of the Act.

SAFA WC made proposals to be added to the draft arbitration agreement. When it sent the proposals in response to the draft arbitration agreement, it was making a counter-offer to the draft arbitration agreement. It proceeded to participate in the arbitration proceedings, without raising any objections and cannot now belatedly object. In *De Lange v Presiding Bishop, Methodist Church of Southern Africa and Another* 2015 (1) SA 106 (SCA) at para 46 it was said:

[46] The requirement that an arbitration agreement be in writing does not mean that it has to be signed or otherwise executed by both parties to the arbitration. All that is required is that the parties have agreed that the dispute in question, or all disputes of a particular character, be submitted to arbitration, and that agreement has been reduced to writing. Thus it matters not that the agreement is concluded orally, provided that a written memorial thereof is produced. The important requirement is, however, that there has been an agreement to arbitrate the dispute that is in issue between the parties. That agreement arises contractually.

The arbitration agreement stood valid against SAFA WC. Having regard to how the arbitration agreement was concluded, SAFA WC has not raised a complaint that convincingly suggested a reason to impugn the validity of the arbitration agreement such that it must be set aside. SAFA WC failure to sign, whether by design or otherwise, did not make a persuasive case [*De Lange v Methodist Church and Another* 2016 (2) SA 1 (CC) at para 36 and 37]

The issue that the arbitrator did not have the power to annul the results of the match, to order a replay and to order that Pupuma appoint the referee and match officials with the proviso that if that was impossible, SAFA National Referees Committee appoint the referee and match officials

[12] Zizwe filed a request for direct arbitration of its dispute in terms of article 71.4 of the SAFA Statutes read with Regulation 81(2) of the SAFA Disciplinary Code on 28 May 2025 related to the disputed match with Hannover Park. Zizwes dispute related to the appointment of match officials for the match and the manner in which the match officials officiated the match. Neither Hannover Park nor SAFA WC took issue with Zizwes characterization of the appointment of the match officials as unlawful, invalid and irregular. Neither Hannover Park nor SAFA WC took issue with Zizwes characterization of the conduct of the match officials who officiated the disputed match as biased in favour of Hannover Park, unreasonable, irrational and that the manner of the appointment of the match officials and the manner that they officiated the match evidenced corrupt activity. No issue arose before the High Court on 10 June 2025, before the arbitrator or before this court on review in relation to this dispute. There was no reason why this part of the award could not be made an order of court.

[13] Given the fact that the integrity of the outcome of the match was compromised, tainted and tarnished, Zizwe amongst others sought that the outcome of the match be reviewed and set aside, the match be replayed, Pupuma appoint the match officials for the rematch and costs in respect of parties who opposed the arbitration. This was the remedy prayed for which Zizwe set out in its dispute in relation to the appointment of the match officials and the way they officiated the match, when they filed their dispute. In the papers before the High Court on 10 June 2025, para 66 of Zizwes founding affidavit read:

66. The fact that the applicant lost the match against the third respondent had deprived it of all those potential benefits. The only way to ensure that the applicant does not suffer irreparable

harm, both as far as its rights to have the dispute in respect of match, decided by arbitration and in respect of the remedy which it is seeking in the arbitration, namely a rematch against Hannover Park before properly appointed match officials, preserved and protected, is for an order to be granted in the terms of the notice of motion. If not, applicant will be unable to have its disputes resolved in terms of the prescribed and agreed dispute resolution measures and any order of court in due course (after the finals have been played) would have no substantive effect and prove to be academic/ a pyrrhic victory.

SAFA WC response, which includes on this point, is in the following terms at para 107 and 108 of its answering affidavit:

107. It is further noted that the Applicant expressly concedes having lost the match following the penalty shootout. Consequently, the Applicant cannot claim any entitlement to relief or benefits based on the outcome of the match, as set out in the relevant paragraphs of the notice of motion. This concession fundamentally undermines the basis for the relief sought.

108. Moreover, it is important to highlight that the First Respondent, in the absence of any successful challenge to the match result, has duly confirmed Hannover Park FC as the winners of the league. This confirmation is consistent with the proper application of the rules and reflects the finality of the competition outcome.

[14] By 10 June 2025, the issues between the parties included the appointment of the match officials; the conduct of the match officials during the match and the remedy of a replay with the appointment of the match officials for that rematch being made by Pupuma; over and above the issue of suspension and others. It is simply opportunistic for SAFA WC to seek to suggest that for unknown reasons, valid in law, the remedy of the replay of the match and the appointment of the match officials for that rematch somehow disappeared within the courthouse, when the parties appeared before the court on 10 June 2025, so much so that all the disputes, except for the replay with the appointment of the match officials being

done by Pupuma, were referred for arbitration by the court order issued on that day. A proper reading of the papers, including the court order of 10 June 2025, left no doubt that a replay with the appointment of match officials being made by Pupuma was one of the issues referred for arbitration. On 15 June 2025 when SAFA WC prepared, and later served a notice to abide the decision of the arbitrator, and indicated that it did not oppose the substantive relief sought by Zizwe in the arbitration and accordingly abided by the decision of the arbitrator in so far as the substance of the relief was concerned, that substance of the relief included the remedy of the replay with the appointment of match officials being made by Pupuma for that rematch. Leading up to 17 June 2025, SAFA WC appears to have held the view that the question of the potential remedy fell squarely within the purview of SAFA. SAFA WC extended an invitation to SAFA to participate in the arbitration proceedings. SAFA elected not to participate and did not respond to SAFA WC invitation to join the arbitration proceedings. On 17 June 2025, at the insistence of Zizwe for SAFA WC to clarify its position, SAFA WC indicated that the suspension was lifted and it was no longer an issue. It elected to abide the decision of the arbitrator on the issue of the appointment of the match officials. This election by SAFA WC on its own was not sufficient to undo the issue of the remedy, which was a constituent part of the arbitration proceedings.

[15] The arbitrator was seized with the issue of a replay as a remedy and the appointment of match officials for the rematch by Pupuma. SAFA WC had a selective memory. Clause 1.3 and 1.4 of the arbitration agreement read as follows:

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.3 The parties to the match disputes pertaining to the appointment of match officials are Zizwe United FC and SAFA Western Cape, although Hannover Park FC has an interest in the sanction

and any further remedy/determination/relief which the arbitrator may decide on. Hannover Parks involvement and participation in the arbitration would be more limited to that of SAFA Western Cape.

1.4 SAFA Western Cape contends that it is not a party to the dispute concerning the match officials and that it is merely an interested party on the outcome of the arbitration and has elected to abide the outcome of the arbitration in this regard.

These were the terms that SAFA WC proposed to be part of the arbitration agreement, after it failed to convince SAFA to join the arbitration proceedings. The parties knew that once the question of the appointment of the match officials and their conduct was determined, and it was found in favour of Zizwe, the arbitrator would determine whether a rematch with officials appointed by Pupuma was the appropriate remedy. This is what the outcome of the arbitration included. SAFA WCs belated pretence of a misunderstanding of what was in issue before the arbitrator cannot be undone by a claim, after the award, that it did not agree that a replay and the appointment of match officials was an issue to be decided. On the other hand, in its submissions before the arbitrator, Hannover Park demonstrated that it understood that a remedy of a rematch was one of the issues referred to arbitration. For arbitration purposes the parties accepted the affidavits which were prepared for the 10 June application as part of the pleadings. In para 5 of its submissions before the arbitrator Hannover Park refers to para 84 of Zizwes founding affidavit in that application; in para 6 to para 134; in para 7 to para 145, 158 and 164 and in para 8 to para 169, where Zizwe indicated its desire that the disputed match result be set aside and the match between the two be replayed before 30 June 2025. In its submissions Hannover Park went on to make submissions which included the competence of any order granted, that the relief sought may affect soccer matters across the country, the appointment of the match officials and their conduct and Zizwes entitlement to the relief sought. Hannover

Parks submissions on the competence of any order granted and Zizwes entitlement to the relief sought are in essence what SAFA WC wants revisited now after having abided the decision of the arbitrator during the arbitration proceedings. Not having objected to the jurisdiction of the arbitrator at the outset and thereafter having voluntarily participated in the arbitration until it was finalized, SAFA WC must be deemed to have acquiesced to his jurisdiction. Any complaint about the arbitrator's lack of jurisdiction being potentially dispositive of the matter should have been raised at the beginning of the arbitration as a point in limine. This was never done. SAFA WC cannot repudiate the jurisdiction of the very arbitrator whose decision they abided by [*Naidoo and Another v EP Property Projects (Pty) Ltd and Others* (444/2012) [2014] ZASCA 97 (31 July 2014) at para 25, 26 and 27].

[16] In *Amalgamated Clothing and Textile Workers Union of South Africa v Veldspun (Pty) Ltd* 1994 (1) SA 162 (A) at 169F-G it was said:

When parties agree to refer a matter to arbitration, unless the submission provides otherwise, they implicitly, if not explicitly (and, subject to the limited power of the Supreme Court under s 3(2) of the Arbitration Act), abandon the right to litigate in courts of law and accept that they will be finally bound by the decision of the arbitrator.

Our law on what SAFA WC sought to do, is an unequivocal No. Generally, a party cannot agree to abide by a decision and then challenge it later. This is based on the legal doctrine of preemption, which means a deliberate and unequivocal waiver of the right to challenge a decision. The principle underlying this doctrine is that no person can be allowed to take up two positions inconsistent with one another, or as is commonly expressed, to blow hot and cold, to approbate and reprobate. When SAFA WC explicitly abided by the decision of the arbitrator, in circumstances where it knew or ought to have known that Zizwe was asking for the disputed

match to be replayed and the appointment of match officials to be made by Pupuma, SAFA WC intentionally and voluntarily surrendered its right to a review. SAFA WC elected not to pursue its answer as set out in paragraphs 107 and 108 of its affidavits cited above. It elected not to object to the arbitrator engaging with the issue of the replay and the appointment of match officials. SAFA WC did not suggest that these issues were beyond the powers or mandate or terms of reference of the arbitrator, at the arbitration proceedings. SAFA WC waived their right to a review in writing on 15 June 2025. SAFA WC is legally bound to that choice.

[17] SAFA WCs opposition and counterapplication lacked merit and stood to be dismissed. The arbitrator had the power to determine his own powers, which were wide, at his sole discretion as envisaged in article 81 para 11 of the Code. This included the power to determine the annulment of a match, which is a competent sanction in terms of the Code. Clause 5.2.2 of the arbitration agreement provided for the arbitrator to rule on his own jurisdiction, including rulings on any dispute about the scope of the arbitration agreement itself. Article 81 read with the rest of the Code clothed the arbitrator with wide powers of determining an appropriate sanction in his own discretion. Annulment of a match is a competent sanction applicable to legal persons in the position of Zizwe and Hannover Park, as provided for in article 12(e) of the Code. The code applied to SAFA WC, Zizwe and Hannover Park as envisaged in article 3 thereof. Article 27 explained what an annulment of the result of a match was and provides that the result of the match is annulled if the result reached on the field of play is disregarded. SAFA WC did not advance good cause to escape the arbitration agreement and the resultant arbitrators award.

[18] The nature of the decision and the rights of all stakeholders as well as any other factor of public interest played a role in determining what an appropriate remedy would be in given circumstances [*Allpay Consolidated Investments v CEO, SA Socia & Security Agency* 2014 (4) SA 179 (CC) at para 29 to 33]. Prejudice to any of the parties was also a relevant factor [*Chairperson, Standing Tender Committee v JFE Sapela Electronics (Pty) Ltd* 2008 (2) SA 638 (SCA)]. In circumstances like the present, where the remedy had an effect on the determination of the winner of the league, time and the just and equitable path of travel to that determination were also relevant factors. There was also a need to send a message to those in power in sporting governing bodies, in this instance SAFA and SAFA WC, that they should respect and adhere to the governing prescripts. The clear message should include that the outcomes of competitions should be determined in accordance with the prescripts, and not by questionable deviations. Annulment as a remedy may follow even if the clubs were completely unaware of the dubious mechanisations at play in the appointment of match officials by a regulatory body, and even if that reversal of the match would have dire consequences for one of the innocent clubs who relied on sponsors, if it is an appropriate sanction. In this approach, I was unable to find any misdirection in AC Oosthuizen SC following the decision of N Snellenberg SC, also an arbitration award in *The South African Rugby Union v Hamilton Rugby Union*, delivered on 26 September 2024. The outcomes of a disputed match which was annulled are reversible, if it is possible to arrange a replay in time. A rematch was a logical flow from the annulment.

[19] A court's discretion to set aside an existing arbitration agreement must be exercised only where a persuasive case has been made out [*De Lange* para 36]. The

court has a discretion which must be judicially exercised and a very strong case for this exercise must be made [*The Rhodesian Railways Ltd v Mackintosh* 1932 AD 359 at 376]. The requirement of good cause to escape an arbitration award entails a consideration of the merits of the case in order to arrive at a just and equitable outcome in a specific set of circumstances [*De Lange* para 37; *South African Forestry Co Ltd v York Timbers Ltd* 2003 (1) SA 331 (SCA) para 14]. SAFA WC conceded that the appointment of the referee and match officials was unlawful, invalid and irregular, in circumstances where Zizwe alleged further that the officiating of the match compromised, tainted and tarnished the integrity of the outcome of the match so much so that it evidenced corrupt activity. Faced with these serious allegations, SAFA abided the decision of the arbitrator. It was in the interests of justice to annul the results of the match to avoid an unfair, unreasonable and unconscionable outcome to remain. There was no compelling reason to set aside the arbitration award. I did not find fault with the way the arbitration has been conducted. For these reasons the order was made.

DM THULARE

JUDGE OF THE HIGH COURT

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