

IN THE HIGH COURT OF SWAZILAND

In the matter of:

CIV. CASE NO. 740/87

ST. JOHN BOSCO HIGH SCHOOL

Applicant

vs.

THE SWAZILAND NATIONAL ASSOCIATION

OF TEACHERS

1st Respondent

MANKAYANE HIGH SCHOOL

2nd Respondent

ATTORNEY-GENERAL

3rd Respondent

CORAM:

DUNN, A.J.

FOR APPLICANT:

MR ZWANE

FOR RESPONDENTS:

MR SHILUBANE FOR 1st & 2nd

JUDGMENT

(12th August, 1987)

DUNN, A.J.

On the 31 st July, 1987 this Court issued a rule nisi calling upon the Respondents to show cause on the 5th August, 1987 why:-

- a) the decision of the National Organising Committee of the 1st Respondent dated 21st July, 1987 upholding the appeal of the 2nd Respondent against the decision of the Protest and Disciplinary Committee of the 1st Respondent should not be reviewed and set aside.
- b) the 1st Respondent should not pay the costs of this application;
- c) the 2nd Respondent should not pay the costs of this application only in the event of it opposing this application.

The 1st Respondent was further interdicted from scheduling any further soccer games involving the 2nd Respondent under the Swaziland Coca-Cola High School Soccer Tournament 1987 pending the return date. It was recorded on that day that no further attendance was required by the 3rd Respondent as the 3rd Respondent had no interest in the matter. It was not possible to proceed with the matter on the return date and the rule was extended to the 11th August, when the matter was argued before me.

2

The relevant facts of this matter are set out in the Applicant's founding affidavit and are briefly as follows:-

The 1st Respondent is a voluntary association of teachers which inter alia organises sporting activities for schools in Swaziland. The applicant and 2nd Respondent are High Schools which qualified for participation in the "E12,000 Secondary and High Schools Coca-Cola football Tournament" which is managed and administered by the National Organising Committee of the 1st Respondent. The Applicant and 2nd Respondent were fixtured to compete in a soccer match at Bhunya Stadium on the 4th July, 1987. The Applicant subsequently found it necessary to request a post-ponement of the match and a

letter dated the 3rd July, was addressed to the District Organising Committee (D. O. C) of the 1st Respondent setting out the reasons for the request. David Nkonyane, the sportsmaster of the Applicant confirmed by telephone that the Secretary of the D. O. C was in receipt of the Applicant's letter and was informed by the Secretary that the 2nd Respondent would be notified of the postponement. The Applicant did not receive any further communication from the D. O. C. until the 9th of July when in the course of enquiries by the Applicant from the Secretary of the D. O. C. concerning the replay of the match between the Applicant and the 2nd Respondent, the Applicant was informed to attend a hearing at 2.00p.m that day, arising from the Applicant's failure to honour the Soccer match on the 4th July. The Applicant attended the hearing which was before the Protest and Disciplinary Committee of the 1st Respondent. The hearing was post-poned to the 15th July. It transpired from evidence which was led on the 15th July that a Mr Motsa who was the Headmaster of Mcabaneni High School had been sent by

3

the Secretary of the D. O. C on the 3rd July to notify the 2nd Respondent that the match between it and the Applicant had been called off and that the 2nd Respondent should avoid the unnecessary expense of travelling to Bhunya. The 2nd Respondent refused to accept the post-ponement of the match and travelled to Bhunya on the 4th July. It appears from a somewhat confused report by the match commissioner that the match was awarded to the 2nd Respondent. The Protest and Disciplinary Committee considered the evidence before it and in a written report concluded as follows:-

"The Protest and Disciplinary Committee feels both Schools did not listen to the District Organising Committee. Verdict:

Due to breakdown in communication among all parties involved the match should be re-played on Wednesday 22nd July, 1987 at Bhunya Stadium."

The 2nd Respondent was not satisfied with the ruling by the Protest and Disciplinary Committee and filed an appeal with the Board of Appeal established under Regulation 4.D. of the tournament regulations. The 2nd Respondent's appeal was dated 17th July, 1987 and was addressed to the Secretary of the National Organising Committee of the 1st Respondent. The Applicant was not served with a notice of the appeal. On the 21st July, 1987 the Applicant was informed by the National Organising Committee that the Board of Appeal had endorsed the match Commissioner's decision awarding the match to the 2nd Respondent. The letter which was addressed to the Applicant reads as follows:-

'Basing our findings on the match commissioner's

4

report, D. O. C's secretary's report on the verdict of the P. D. C. and the letter of appeal from Mankayane, it is evident that D. O. C. did not grant John Bosco the request for postponement of the match which was to take place at Bhunya stadium between Mankayane and John Bosco on the 4th July, 1987. According to 1987 Rules and Regulations governing the tournament number 5{2d) "A team which without having received permission"

John Bosco forfeited the match thus the match commissioner' s decision to award the game to Mankayane is endorsed by the Appeal Board. Thus, Appeal fee of E300 is returned to Mankayane High School.

Yours sincerely.

E.M. NSIBANDZE

N. O. C. SECRETARY

The main ground on which the Applicant bases its case is that the failure to advise the Applicant of the

2nd Respondent's Appeal or to allow the Applicant to reply or be heard in the appeal was contrary to the audi alteram partem principle. Regulation 4.D. of the regulations of the tournament reads:-

i. The Board of Appeal shall be composed of members of the National Organising Committee Executive.

ii. The Board of Appeal may seek advice from a competent person or committee on matters concerning the interpretation of the rules and regulations.

5

iii. A member of the Board may not take part in any meeting in which his school or team is involved.

iv. On request, the parties involved may be granted a hearing.

v. The decision (s) of the Board of Appeal shall be final, not subject to appeal.

Reliance was placed by the 1st Respondent on Regulation 4.D.IV. that it was within the discretion of the Board of Appeal whether or not to grant a party a hearing and that it was not open to the Applicant to demand a hearing as a matter of right. The point here it that the Board of Appeal was never called upon to exercise its discretion in so far as hearing the Applicant was concerned. The Applicant had no notice of the appeal and could not therefore have requested to be granted a hearing. The regulations do not set out the procedure to be followed in noting an appeal from the Protest and Disciplinary Committee and cannot be read as excluding the need for the Applicant to be notified of the appeal. The Board of Appeal sets out in its letter of the 21st July, that its findings were based inter alia on the "D. O. C's Secretary's report on the verdict of the Protest and Disciplinary Committee." The Secretary's report was not made available to the Applicant and was not referred to in the proceedings before the Protest and Disciplinary Committee. The Applicant was in my view

6

entitled to reply to the Secretary's report and in particular as to why the report was not given in evidence before the Protest and Disciplinary Committee. The possibility that the Secretary's report was prejudicial to the Applicant cannot be ruled. The audi alteram partem principle requires that a person in the Applicant's position be placed in a position to defend himself against potentially prejudicial facts.

The decision of the Board of Appeal cannot in the circumstances be allowed to stand. The rule nisi issued on the 31st July, 1987 is confirmed with costs against the 1st and 2nd Respondent. The decision of the Protest and Disciplinary Committee thus stands.

Mr Shilubane made certain submissions regarding the Applicant's failure to approach the court for a review of the Board of Appeal decision under Rule of Court No.53. This failure is not fatal to the application. The application was brought under a certificate of urgency and it is clear from the rules and regulations of the tournament that the Applicant was a party to the tournament at a stage when the tournament was on a knock-out basis. If the Applicant had allowed the tournament to continue and had not challenged the decision of the Board of Appeal the Applicant would have been without a remedy thereafter. For a case where a similar approach was adopted by an Applicant see MANZINI WANDERERS FOOTBALL CLUB v. SPECIAL COCA-COLA COMMITTEE OF THE NATIONAL FOOTBALL ASSOCIATION OF SWAZILAND AND OTHERS . 1970 - 1976 SLR. 428.

B. DUNN

CTING JUDGE