

**IN THE HIGH COURT OF ESWATINI
JUDGMENT**

HELD AT MBABANE

CASE NO. 2336/2020

In the matter between:

YOUNG MOVERS FOOTBALL CLUB

APPLICANT

And

**CHAIRPERSON PLAYERS' STATUS
COMMITTEE**

FIRST RESPONDENT

SIPHO MATSE N.O.

SECOND RESPONDENT

NSINGIZINI HOTSPURS FC

THIRD RESPONDENT

SIPHAMANDLA DLUDLU

FOURTH RESPONDENT

**THE SECRETARIAT OF THE NATIONAL
FOOTBALL ASSOCIATION**

FIFTH RESPONDENT

**THE NATIONAL FOOTBALL
ASSOCIATION OF ESWATINI**

SIXTH RESPONDENT

Neutral Citation: *Young Movers Football Club vs Chairperson Players status& 5 Others (2336/20) SZHC 249(24th January 2022)*

Coram: LANGWENYA J

Heard: 26 November 2020; 7 December 2020; 26 January 2021

Delivered: 24 January 2022

Summary: *Civil Procedure-Urgent application-review of a decision of Chairperson of Player's Status Committee-grounds of review-wrongfulness, unlawfulness, irregular and unreasonableness-Chairperson dismissed application for postponement of proceedings before him-applicant had applied for postponement of same-basis for postponement-short notice-applicant sought to instruct an attorney.*

Civil Procedure-Costs follow event-Sixth respondent to pay applicant's costs.

JUDGMENT

Introduction

- [1] The applicant instituted these proceedings under a certificate of urgency seeking an order *inter alia* reviewing, correcting and setting aside the proceedings and decision of the Chairperson of the Player's Status Committee in the matter between the applicant and Nsingizini Hotspurs

Football Club and Siphamandla Dlodlu as unlawful, irregular, irrational, unfair and grossly unreasonable; and directing the Secretariat of the National Football Association as well as the National Football Association of eSwatini to appoint a special Player's Status Committee in the event there is an issue of status of Siphamandla Dlodlu to be determined¹.

- [2] The matter was opposed and timelines for all disputants to file their pleadings were set and agreed upon. It was agreed that the matter would be argued on 7 December 2020. On the date agreed for hearing of the matter, not all parties had filed their pleadings. A new date of 26 January 2021 was, by consent set for argument. On 26 January 2021 the parties informed the court that they had arrived at a concession that the order in terms of prayer six of the notice of motion should be granted as it is dispositive of the matter. With the consent of all parties, an order directing the secretariat of the National Football Association and the National Football Association of eSwatini to appoint a special Player's Status Committee in the event there is an issue of status of Siphamandla Dlodlu to be determined was therefore granted by the court.

Brief Background

- [3] The common cause background of the matter is that during 2019/2020 soccer season, the applicant and Siphamandla Dlodlu entered into a contract in which the latter would play football for the applicant for the football season of 2019/2020 inclusive of the football season of 2022/2023.
- [4] On 18 November 2020, through the office of the secretariat of the National Football Association, the applicant was invited to appear for a hearing

¹ Refer to page 4-6 of the Book of Pleadings for a full text of the prayers sought in this application.

before the chairperson of the Player's Status Committee on 19 November 2020 at 1730 hours. The invitation to appear before the Player's Status Committee was at short notice-so it was averred by the applicant. A request for a postponement of the hearing for the reason it was on short notice and that applicant sought to instruct an attorney in the matter was refused by the chairperson of the Player's Status Committee.

- [5] In this application, the applicant seeks to have the decision of the chairperson of the Player's Status Committee reviewed, corrected and set aside on the ground that it was wrongful, unlawful, irregular and unreasonable-among others.
- [6] The application was opposed. On a later date, all disputants consented to an order granting prayer six of the Notice of Motion and stated that such an order would be dispositive of the matter. The order was accordingly granted.
- [7] The parties did not agree on the question of costs. The court heard arguments on costs and reserved its judgment on the issue of costs.

Costs

- [8] The ordinary rule that applies in matters of costs is that costs follow the event. That is not, however a hard and fast rule. It is also recognized that in matters of costs, the court exercises discretion, depending on the attendant circumstances. The discretion of the court must be exercised judiciously and not whimsically or capriciously to depart from the general rule. In exercising that discretion, the court should have regard to the general rule that the party

who succeeds should be awarded his/her costs and that the rule should not be departed from except on good grounds².

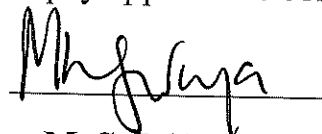
[9] It is settled law that the purpose of an award of costs to a successful litigant is to indemnify him/her for the expenses he has incurred in defending or being compelled to initiate litigation; these costs are referred to as party and party costs. It is trite that such costs do not include all the costs that the litigant has incurred but only those expenses which appear to the Taxing Master to have been necessary in defending or initiating the legal proceedings³.

[10] In *Texas Co (SA) Ltd v Cape Town Municipality*⁴ the Court stated as follows:

'...Costs are awarded to a successful party in order to indemnify him for the expenses to which he has been put through having been unjustly compelled either to initiate or defend litigation, as the case may be. Owing to the necessary operation of taxation, such an award is seldom a complete indemnity but that does not affect the principle on which it is based.'

[11] It is my view that applicant is entitled to costs for work done until the consent order was issued on 26 January 2021. A case has been made out for the granting of a costs order in favour of the applicant. I find that it would be unjust and unsatisfactory if applicant was denied its costs.

[12] The sixth respondent must pay applicant's costs.



M. S. LANGWENYA

JUDGE OF THE HIGH COURT

² See: Herbstein & Van Winsen 'The Practice of the Supreme Court of South Africa' 4th edition by Louis De Villiers, Van Winsen et al, Juta & Co. 1997 at pages 701-702.

³ See: Herbstein & Van Winsen (above) at pages 701-702.

⁴ 1926 AD 467, 488

For the Applicants:

Mr P. K. Msibi

For the 1st, 2nd and 5th & 6th Respondents:

Mr D. M. Dlamini

For the 3rd & 4th Respondents:

Mr L. Dlamini