

IN THE INDUSTRIAL COURT OF SWAZILAND

**HELD AT MBABANE**

**CASE NO. 104/2006**

In the matter between:

**MYENGWA MACUBA SIBANDZE**

**Applicant**

And

**NATIONAL FOOTBALL**

**ASSOCIATION**

**OF**

**SWAZILAND**

**Respondent**

**CORAM:**

**NKOSINATHI NKONYANE: ACTING JUDGE**

**DAN MANGO: MEMBER**

**GILBERT NDZINISA: MEMBER**

**FOR APPLICANT: MTHUZISHABANGU**

**(SIGWANE & PARTNERS ATTORNEYS)**

**FOR RESPONDENT: ZWELIJELE**

**(ROBINSON BERTRAM ATTORNEYS)**

**R U L I N G O N P O I N T S I N L I M I N E - 2 4 / 0 3 / 0 6**

[1] This is an application brought by the Applicant against the Respondent on a

certificate of urgency.

[2] The Applicant is seeking an order in the following terms:

*"1. Dispensing with the usual forms or services provided for in the Rules of the above Honourable Court and disposing or hearing this matter as one of urgency.*

*2. Condoning the Applicants failure in strictly complying with the said Rules.*

*3. Declaring that the national Football Association of Swaziland Executive Committees decision taken on the 3<sup>rd</sup> March, 2006 purporting to terminate the Applicant's employment contract with the Respondent is null and void ab initio and thus of no force and effect.*

*4. Declaring that the Executive Committee of the national Football Association of Swaziland had and/or has no lawful authority or mandate to take any decision purporting to determine the Applicants employment contract with the Respondent.*

*5. Declaring that the dismissal of the Applicant was invalid and /or unlawful.*

*6. Directing and/or ordering the Respondent to reinstate the Applicant forthwith.*

*7. Interdicting the Respondent from hiring any other Director of Coaching/Technical Director pending finalization of this matter.*

*8. Directing that Orders 3, 4, and 7 operate as interim and immediate relief pending finalization of this matter.*

*9. Granting the Applicant costs of this Application."*

[3] The Respondent filed a Notice to Oppose and an Answering Affidavit.

[4] In its Answering Affidavit the Respondent raised preliminary points, namely that the Applicant has failed to establish urgency, and secondly, that this court has no jurisdiction to entertain this application.

[5] The court will accordingly deal with the points of law raised ad seriatim:

Urgency:

It was argued on behalf of the Respondent that the Applicant has failed to show that this application is distinguishable or unique from all the other matters of unfair dismissal that come before the court. It was further argued on behalf of the respondent that the Applicant has failed to show that he has no alternative remedy other than to approach the court on an urgent basis.

[6] The grounds for urgency are set out in paragraphs 14.1 to 14.3.1 of the Applicant's Founding Affidavit. In paragraph 14.1 the Applicant stated that his post is a high profile one and it will be brought into disrepute if the matter of his dismissal is not urgently addressed. The Applicant also stated that all his dreams in his football career both nationally and internationally would be shattered.

[7] These however cannot be grounds for urgency. The fact that someone holds a high profile job cannot be a ground for urgency. Furthermore, that one's dreams would be shattered as a result of a dismissal cannot found urgency. These are factors common or inherent in every case of dismissal.

[8] In paragraph 14.2 the Applicant stated that he stands to lose his job if he takes the long route of reporting the matter to the Conciliation Mediation and Arbitration Commission (hereinafter called "CMAC"). All that the Applicant means by this averment is that he will be inconvenienced by having to follow the normal procedure of bringing an application to this court. Inconvenience is not, however, a ground for urgency.

[9] This case is clearly distinguishable from the case of Gideon Mhlongo v City Council of Mbabane and Others I.C. case No. 31/03 that the court was referred to by the Applicant. In the Mhlongo case there was evidence that the City Council had already been instructed by the Ministry of Housing and Urban Development to engage in a process of recruitment to fill the Applicant's position. There was no such evidence or allegation in the present case.

[10] The Applicant further stated in paragraph 14.3 that these are string of activities which he should be working on both nationally and internationally. These activities had however already been delegated by the Respondent to its other officers before the matter came to court.

[11] As regards the international activities of the respondent, it transpired that someone else other than the Applicant's was nominated to participate as early as the 26<sup>th</sup> February 2006. It is not clear therefore the Applicant raised this as a ground to found urgency when he knew very well that someone else was nominated by the Respondent on the 26<sup>th</sup> February 2006 to attend the symposium in Morocco starting from the 28<sup>th</sup> up to the 29<sup>th</sup> March 2006.

[12] From the foregoing observations it is clear to the court that the Applicant has failed to establish urgency.

[13] Jurisdiction:

It was also argued by the Respondent that this court had no power to entertain the present application. It was argued that this court has no power to make a ruling on the constitutionality or otherwise of the Respondent's activities in terms of the Respondent's constitution as well as the FIFA statutes.

[14] This point was clearly raised because of the manner that the Applicant framed his prayers. The essence of the Applicant's prayers is that this court should make a declaratory order that his termination of employment on the 3<sup>rd</sup> March 2006 is null and void *ab initio*. He wants the court to make such an order because he claims that the Respondent's Executive Committee that purported to dismiss him had no lawful authority to do so because it was unlawfully elected into office.

[15] These averments are stated in paragraphs 12, 12.1 to 12.6 of the Founding Affidavit.

[16] In paragraphs 12,12.1 and 12.2 the Applicant stated that:

*v/v/ the alternative, I am advised and verily believe that my dismissal from employment was irregular and unlawful in the following respects:*

*12.1. The Executive Committee of the National Football Association of Swaziland had and/or has no lawful authority to take any decision purporting to affect my contract of employment with the respondent*

*owing to the fact that the said Executive Committee is illegally and/or unconstitutionally in office.*

*12.2. The current Executive committee was elected and put in place by members who had no legal or constitutional powers to vote as per the Constitution of the National Football Association of Swaziland, owing to the fact that these had both forfeited and ceased to be members of the national Football Association due to their failure to pay the 2004 annual subscriptions."*

[17] It is clear therefore that the court is being asked to make a finding on the legality of the Respondent's Executive Committee that made the decision to terminate the Applicant's employment contract.

[18] It was argued by the Respondent that this court has no jurisdiction to involve itself in football matters.

[19] It is common cause that the Respondent is an affiliate of FIFA. The court was referred to Article 61 (ii) of the FIFA statutes which states that:

*"Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations."*

[20] It was also argued by the Respondent that Article 27 (1) of the Respondent's constitution specifically prohibited the bringing of such matters to courts.

[21] The court was also referred to the case of Moneni Pirates Football Club and Maonodi Sidell vs Premier League of Swaziland H.C. Case No. 258/2003 a similar point in limine was raised that the court did not have jurisdiction to entertain the matter. After referring to article 27 (1) and the FIFA statutes, the point of law was upheld.

[22] It was argued by the Applicant that this court does have jurisdiction to entertain this application. The court was referred to the Industrial Court of Appeal case of Mathembi Dlamini v Swaziland Government Case No. 4/2005. At pages 16-17 thereof Annandale JP held as follows:-

*"[46] There is one more matter to deal with. The Respondent, most surprisingly, raised a point of law in its heads or argument to the effect that "The Industrial Court does have jurisdiction to review a decision of an employer."*

*[47] The respondent apparently lost right of the enabling provisions of sections 6 (1), 8 (1) and 8(3) of the Act.*

*[48] Thus in discharging its functions under the Act, the Industrial Court may exercise the power to review decisions of statutory boards, and bodies acting qua employer, provided, in terms of Section 8(i) of the Act, that the decision related to an infringement of labour legislation or "any matter which may arise at common law between an employer and employee in the course of employment."*

[23] There is clearly no doubt that this court, has jurisdiction to deal with matters arising from employer/employee relationships. In the present application however the grounds in support of the orders sought are such that Article 27(1) of the Respondent's constitution is applicable.

[24] Article 27(1) of the Respondent's constitution has the effect of ousting the jurisdiction of the court. That article states that:

*'should any dispute of any nature arise between the Association and/or its members and officers (including member associations and leagues and their respective members and officers) and/or clubs and/or members and officers of clubs, including any dispute as to validity, interpretation and implementation of this constitution, then such dispute shall (unless otherwise resolved between the parties) be submitted to an be interpreted by arbitration in terms of this article.'*

[25] The Applicant is an officer of the Respondent. The Applicant is challenging the legality of the Respondent's Executive Committee. That is clearly a matter to be dealt with in terms of the provisions of Article 27(1) of the Respondent's constitution. The Respondent's constitution says that that question must be determined by arbitration.

[26] It is clear to the court that the way that the Applicant has framed its application, it is asking the court to get itself involved in Football matters. The courts jurisdiction is ousted by the Respondent's constitution.

[27] It follows therefore that the second point of law must also be upheld.

[28] There will be no need for the court to deal with the other preliminary points raised as the upholding of these two points will have the effect of disposing of the matter.

[29] The present application as it stands will accordingly be dismissed with costs as the Applicant is a seasoned official of the Respondent and should have known better that he was not entitled to bring the Respondent's constitutional issues to this court.

[30] The Applicant is entitled however to report a dispute if his termination was tainted with any unlawfulness or unfairness as envisaged by the labour laws of the country.

[31] The application is accordingly dismissed with costs.

The members agree

**NKOSINATHI NKONYANE A-J**  
**INDUSTRIAL COURT**