

HIGHLANDERS FOOTBALL CLUB

Versus

ZIMBABWE FOOTBALL ASSOCIATION

And

PREMIER SOCCER LEAGUE

And

SPORTING LIONS FOOTBALL CLUB

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 17 MARCH 2003

N Mathonsi for the applicant
J P Mutizwa for 1st and 3rd respondents

Urgent Chamber Application

CHEDA J: This is an urgent chamber application filed by applicant on 27 February 2003 seeking the following relief.

(A) **“Terms of Final Order Sought**

First, second and third respondents show cause to this honourable court why a final order should not be made in the following terms:-

1. That the registration of football players Dezidelio Kapenya, Thabani Masawi and Blessing Gumiso to play football for third respondent be and is hereby suspended pending the resolution by an appropriate tribunal which should be set up by first respondent of the ownership dispute between the applicant and third respondent.
2. That in the event that such registration has already taken place then it is hereby cancelled to allow for determination of the matter in terms of paragraph 1 above.
3. That the declaration by the first respondent that the said players are free to join any club of their choice is hereby set aside.
4. That the costs of this application shall be borne by the first and third respondents jointly and severally the one paying the other to be absolved on an attorney and client scale.

(B) **Interim Relief Granted**

Pending the finalisation of this matter the applicant is granted the following relief:-

5. That the first, second and third respondents are interdicted from registering Dezidelio Kapenya, Thabani Masawi and Blessing Gumiso to play for third respondent until the dispute between the applicant and third respondent involving ownership of the players has been determined.
6. That in the event that such registration has taken place, it is hereby suspended until the matter has been determined and finalised.
7. That the third respondent is interdicted from using the said football players in any of its football matches until the dispute has been settled.”

The brief facts are that applicant is a football club, a universitas or voluntary association duly constituted in terms of a constitution and carrying on business at 50 R. Mugabe Way, Bulawayo. First respondent is Zimbabwe Football Association also duly constituted in terms of a constitution and is responsible for running the national football and carrying on business from inter alia 3rd Ave and Fife Street, Bulawayo. Second respondent is the Premier Soccer League, a universitas or voluntary association responsible for the management of the premier soccer league and is constituted in terms of a constitution and carried on business at 2 Basil Place, 10th Ave, Bulawayo. Third respondent is Sporting Lions Football Club a universitas or voluntary association constituted in terms of a constitution and is contactable through one Xavier Abel Dziwa at Trust Merchant Bank, Harare.

Applicant has three players namely Dezidelio Kapenya, Thabani Masawi and Blessing Gumiso who for years have been contracted and had been playing for it. It is common cause that some weeks back negotiations commenced between applicant and 3rd respondent regarding the possible transfer of Thabani Masawi and Blessing Gumiso. Regarding Dezidelio Kapenya 3rd respondent refused to negotiate his release

HB 47/03

on the understanding that he was a “free agent” whose services can be acquired without reference or approval of applicant. A dispute then developed which resulted in this application.

On 28 February 2003 I granted the provisional order the confirmation of which was opposed by 1st and 3rd respondent. First respondent through its Chief Executive Officer, one E Rogers wrote three letters regarding the three players as follows:

“On ZIMBABWE FOOTBAL ASSOCIATION letterhead

To: Whom It May Concern

Re: PLAYER THABANI MASAWI

This serves to inform you that the player Thabani Masawi’s contract with his previous club Highlanders expired on January 31 2002.

This means the player is free to engage in talks with a club of his choice.

We wish the player well in his future endeavours.

Yours in sport

(Signed)
E ROGERS
Chief Executive Officer

Cc: PSL”

The three letters were not addressed to anyone in particular and were undated.

It is on the basis of the said letters that 3rd respondent concluded that they can negotiate with the players directly without reference to applicant. However,

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“Title: FIFA Regulations for the status and transfer of players

Preamble

1. These regulations deal with the status and disability of players as well as with the rules applicable when players move between clubs belonging to different national associations.
2. ...
3. Each national association is obliged to provide a system for transfers that are effected within its own association and to draw up appropriate regulations which shall be approved by FIFA. Such regulations shall observe the general principles stipulated in the following articles and contain provisions for any dispute that may arise in connection with a national transfer (i.e. a transfer within the same national association).

In addition, article 29(i) and (ii) read:-

- (i) Any rules or regulations of the association must comply with the rules and regulations of FIFA. Where any of the association’s rules and regulations are at variance with those of FIFA, the rules and regulations of FIFA, present and future, shall prevail.
- (ii) No affiliate of the association or members of affiliates or clubs or members of clubs, shall be permitted to bring before the courts of law disputes with the association or other associations, clubs, or members of clubs. They must agree to submit any such disputes to a Disciplinary Committee duly appointed by the association or a committee to which they are affiliated or a special committee or an arbitration tribunal appointed by the association. Any affiliate member of the association is also not permitted to bring before the courts of law disputes with the association, but shall submit their disputes to the Special Committee or an arbitration tribunal appointed by the association by common consent.”

It was also their contention that 1st respondent has not put in place a system for transfer and their failure to do so is therefore the cause of the administrative problems in this matter.

HB 47/03

Mr Mutizwa for 1st and 3rd respondents argued that this matter should not have been brought before the courts as an application but should have been brought on review. I do not agree with his argument because the declaration of the players as

free agents was not properly made. The decision to declare them free agents was not made by any body as there is non in existence. E Rogers' letters are not addressed to any one in particular and are undated. This, to me is an indication of a sinister motive by him for and on behalf of ZIFA. The urgent application clearly meets all the requirements of an urgent application as stipulated by the rules of the court. The said declaration was in my view, no declaration at all as it was based on non-existent facts in particular Thabani Masawi's contract is said to have expired in December 2002 yet it was in fact still operational as it only expires on 31 December 2003 whichever one looks at it the decision was based on either total disregard of ZIFA rules or sheer ignorance. I should like to add that this beautiful game of soccer is clearly spoiled by maladministration at the national body (ZIFA).

At the hearing *Mr Mathonsi* advised that Mr Mhurushomana had been making frantic efforts to have this matter removed from the courts by directly telephoning *Mr Mathonsi* without *Mr Mutizwa's* (their legal practitioner) knowledge. This was confirmed by a letter to applicant's secretary of 13 March 2003 which reads:-

“ZIMBABWE FOOTBALL ASSOCIATION

13 March, 2003

The Secretary
Highlanders Football Club
BULAWAYO

Dear Sir

HB 47/03

Re: **PLAYERS DEZIDELIO KAPENYA, THABANI MASAWI AND BLESSING GUMISO – CHAMBER APPLICATION – BULAWAYO HIGH COURT**

This letter serves to inform you that at a meeting of the ZIFA Board on Friday 7 March 2003 it was resolved that the above matter be withdrawn from the

courts and be referred to an appropriate tribunal as instructed by the High Court.

ZIFA has gone ahead and requested Mr Muchadeyi Masunda of the Commercial Arbitration Centre to assist in setting up this tribunal. We are therefore pleased to announce that retired Justices Adam, Mick McNally and Mr Muchadeyi Masunda have both agreed to serve on this tribunal.

The matter will be set down for arbitration on Friday 14 March 2003 at the Arbitration Centre, Old Mutual House, Third Street Harare at 1100 hours.

Please contact Mr Masunda on telephone No. 706262/790669/70 and fax No. 790970 Harare to confirm participation.

We thank you for your kind co-operation in this matter.

Yours in sport

(Signed)

L Mhurushomana

SENIOR ADMIN AND TRAINING MANAGER

cc. Mr Masunda
Ms Coghlan & Welsh – Mr Mathonsi
Ms Chihambakwe, Mutizwa and partners – Mr Mutizwa
PSL
ZIFA Chief Executive”

The input of the letter is a clear indication that 1st respondent have now re-visited their previous position and would like to deal with the matter internally as per FIFA’s regulations referred to above. This stance has taken *Mr Mutizwa* by surprise. The about turn by Mr Mhurushomana confirms my observation of confusion reigning at ZIFA. It is clear that “a free for all” situation obtains, as evidenced by the total independent and contradictory actions of Messrs Rogers and Mhurushomana.

HB 47/03

Mr Mhurushomana’s latest action is in total agreement with the prayer sort by applicant namely that this matter should be referred to a tribunal which tribunal 1st respondent has already put in place. This, therefore puts paid the dispute of whether

or not this court should hear this application or not as 1st respondent are now in agreement with applicant that the matter be referred to a tribunal set up by ZIFA in accordance with FIFA regulations.

In light of the above the provisional order is confirmed with costs.

Messrs Coghlan & Welsh applicant's legal practitioners

Messrs Chihambakwe, Mutizwa & Partners 1st and 3rd respondent's legal practitioners