

Judgment No. HB 99/08

Case No. HC 1848/08

ZIMBABWE SAINTS FOOTBALL CLUB

VERSUS

ZIMBABWE FOOTBALL ASSOCIATION

AND

RAILSTARS FOOTBALL CLUB

IN THE HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 29, 30 SEPTEMBER 2008 AND 2 OCTOBER 2008

Mr Moyo for the applicant

Mr Hara for the 1st respondent

Urgent Chamber Application

CHEDA J: This is an urgent chamber by applicant whose interim relief is couched in the following terms:-

“Terms of the Final order

That you show cause to this Honourable Court why a final order should not be made in the following terms;

- (a) It be and is ordered that the match between Zimbabwe Saints Football Club and Railstars Football Club which was abandoned on August 11, 2008 be replayed at a date and time to be set by First respondent.

It be and is ordered that any game that may have been played by 2nd Respondent in the CBZ Cup tournament of 2008 after the abandoned game mentioned above be and is hereby declared a nullity.

It be and is hereby ordered that the disqualification of Applicant by 1st Respondent in the CBZ Cup be and is hereby declared unlawful and of no force and effect.

Interim Relief Granted

Pending the finalization of this matter, the Applicant is granted the following relief-

All games involving 2nd Respondent in the CBZ Cup tournament be and are hereby

Judgment No. HB 99/08

Case No. HC 1848/08

2

suspended pending the hearing by the Disciplinary Committee of First Respondent of the causes and/or reasons for the abandoning of the match between Applicant and 2nd Respondent in terms of the constitution of First Respondent.

Service

This provisional order shall be served on First Respondent at its offices at Fife Street/3rd Avenue, Bulawayo, and on Second respondent at its offices at Raylton Sports Club, Bulawayo by Applicant's legal practitioners or their clerk."

First respondent is the Zimbabwe Football Association [herein referred to as "ZIFA"]

whose address for service is Fife Street/3rd Avenue, Bulawayo.

Second respondent is Railstars Football Club whose address for service is Raylton Sports Club, Bulawayo.

Applicant and respondents are legal *personae* capable of suing and being sued. They are both governed and controlled by their constitutions. A tournament sponsored by Central Bank of Zimbabwe Bank is currently in progress and a number of teams have participated and continue to do so.

The brief facts of this matter are that a draw of the participating teams was conducted by (ZIFA) after which applicant was paired with a number of other clubs and subsequently with second respondent.

On the 11th August 2008, applicant played against second respondents wherein they played full time, and the score was one apiece which resulted in extra time of play. Before they commenced play they held a prayer meeting in a circle. While this was going on and before the applicant's players were ready to play, the referee blew a whistle signaling the start of the match. Second respondent's players wasted no time and shot the ball into an empty net and happily scored.

Applicant's argument is that the referee did not handle this matter fairly which led it into reporting the matter to first respondent as per the procedure in terms of their constitution. The matter was finally referred to the Zimbabwe Football Association Southern Region for review who referred it to first respondent's Chief Executive officer who unfortunately did not respond positively but instead ordered second respondent to proceed to the second round of the competition.

As applicants were unhappy with that decision, they then approached this court for relief.

Second respondent did not file any papers in opposition in this matter. This

Judgment No. HB 99/08

Case No. HC 1848/08

3

stance, is interpreted by *Mr. Moyo* for applicant to mean that they agree with applicant's submissions that they were some irregularities regarding the manner, the matter was handled by first respondent under whose control the committee fall. Applicant is indeed forgiven from making this conclusion. I see no reason for the non-opposition if they did not agree with applicant's assertion about the events in this matter.

Mr. Hara for first respondent has attacked this application on two points namely the procedure adopted by applicant in bringing this matter before the court and the jurisdiction of the court.

Applicant applied for a review using an urgent chamber application. Order 33 rule 256 states:-

"Save where any law otherwise provides, any proceedings to bring under review the decision or proceedings of any inferior court or of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions, shall be by way of court application directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairman of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected." (my emphasis).

This procedure was manifestly improper as it fails to comply with the rules of the court. Rules of the court are there to be complied with at all times.

It is therefore clear that a review should be by way of motion and not ex parte. The rule is mandatory and, therefore, failure to comply with it results in fatal consequences.

The second argument is that applicant should have appealed the decision of first respondent first. This is based on the principle of the need to exhaust ones' domestic remedies before seeking to rely on the courts; see *Welkom Village Management and Board v Leteno* 1958(1) SA 490 (AD) at 502 and *Local Transportation Board and another v Durban City Council and another* 1965(1) SA 586 at 593. The parties' constitution has laid down procedures to be followed whenever there is an infringement on any of its members' rights, privileges and/or irregularities.

Applicant should not have used an urgent application for review but a court application as required by the rules of this court. It ought also to have exhausted all the domestic remedies available to it before approaching the court. For those two reasons this application must fail.

The following order is therefore made:-

(1) The provisional order issued by this court on the 18th September 2008 be

Judgment No. HB 99/08

Case No. HC 1848/08

4

and is hereby discharged.

Applicant to pay the costs of this application.

Messrs. Moyo and Nyoni, applicant's legal practitioners

Messrs. T Hara and partners, 1st respondent's legal practitioners