KHAMI UNITED FOOTBALL CLUB

AND

ZIMBABWE FOOTBALL ASSOCIATION

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 5 AND 10 MAY 2010

R. Ndlovu for applicant
Munjanja for respondent

Urgent Chamber Applicant

KAMOCHA J: The respondent in this matter has anticipated the return date of a provisional order granted by this court on 1 April 2010. Its terms were that pending the finalisation of the matter the respondent be ordered and directed to take all reasonable steps to forthwith suspend the commencement of the 2010 Division One Southern Region League. The respondent was to further, forthwith, communicate the suspension of commencement of the 210 Division One Southern Region League to all participating teams and to the applicant's legal practitioners.

The circumstances giving rise to the urgent chamber application were that on 25 January 2010 the Zimbabwe Football Association Southern Region addressed the following letter to the applicant-

> "The Secretary
> Khami United Football Club
> **BULAWAYO**

Dear Sir,

Re: Confirmation of Admittance to Division (1) League.

We write to you on this instance confirming your admittance to our Division one League, having finished on second position in Division 2A stream in 2009 season.

We take this opportunity to congratulate you on your promotion and hope you are going to cope with the dictates of our league.

Yours in sport

S.B. Ntenezi
"Secretary)"

On 18 February 2010 the respondent for reasons best known to itself only addressed the following letter to the applicant:-

"Re: Division Two Play OFFs

ZIFA Southern Region has indicated that our runners up in Division 2A and B respectively should be engaged in play offs for promotion to Division One for the 2010 season.
The winner between your team and Cosmos will qualify for play offs against the winner in Matebeleland North Province. The date for the play offs is 27 February 2010 at 1500 hours at a venue yet to be advised.

You are therefore advised to make suitable preparations for the tournament.
Yours in Sport

Washington Chimanda
(Secretary General)"

The applicant, despite the above letter of confirmation of admittance to Division One League, participated in the play offs as directed by respondent and won all the matches. The applicant then believed that it earned the right and legitimate expectation to be promoted to Division One League for the 2010 season.

But alas, that was not to be as the respondent by a letter dated 22 March 2010 advised applicant that it would not be promoted to Division One League after all.

This turn of events prompted the applicant to launch this application on a certificate of urgency and was granted a provisional order. The final order which applicant seeks to be confirmed calls on the respondent to show cause why an order should not be made in the following terms:-

> "(1) The decision of the respondent not to promote the applicant to Division One League for the 2010 season despite applicant qualifying for such promotion, be and is hereby declared to be unreasonable and unfair, and a contravention of section 3(1) (a) of the Administrative Justice Act [Chapter 10:28].
> (2) The respondent be and is hereby ordered and directed to promote and admit the applicant to Division One League for the 2010 season.
> (3) The respondent be and is hereby ordered to pay the costs of suit (including costs of counsel) on an attorney and client-scale if it opposes confirmation of the Provisional order."

The applicant contended that the suggestion by the respondent that it would not be promoted because there was no slot in Division one League was without merit whatsoever for the simple reason that Victoria Falls United which lost in the play offs against applicant ought to have been relegated from the Division one League to Division 2. But, strangely, the respondent had decided to keep it in Division One League at the expense of the applicant which had won all its games in the play offs.

That was grossly unfair and unreasonable. The respondent argued that its decision to promote the applicant as well as the decision to promote the team which won its games in play offs was reversed by an assembly of clubs in Division one League. An assembly of eleven clubs was alleged to have made the decision to rescind the respondent's decision on 9 February 2010. The decision was allegedly ratified on 7 March 2010. Respondent did not file the

minutes of the meeting allegedly held on 9 February 2010. The minutes of the alleged Annual General Meeting of 7 March 2010 are not dated. It is therefore not clear when the alleged Annual General Meeting was held.

The applicant went on to conclude that no meeting was held on 9 February 2010. If such a meeting had been held and resolved not to promote the applicant the respondent would not have directed the applicant on 18 February to participate in play offs starting on 27 February 2010. The applicant continued with the play offs until 6 March 2010 which was a day before the alleged Annual General Meeting. The last match was against Victoria Falls United which failed to attend resulting in the applicant being declared the winner of that match.

The applicant was invited to attend a meeting the following day whereat it was advised that it could not be promoted to the next division league. Yet the losing team which should have been relegated was allowed to remain in Division 1 league. I find it very difficult to imagine anything more unfair and unreasonable than the actions of the respondent.

Respondent's contention that its decision was overturned by that of the assembly of eleven clubs clearly reveals the confusion that exists within the two organisations. The respondent was acting without the mandate of the supreme body. It failed to consult the supreme body before confirming that the applicant was admitted to Division 1 league. It also was not mandated by the supreme body to invite applicant to participate in play offs.

If the court is to accept the assertion that the decision not to promote the applicant was that of the assembly of clubs then that assembly of clubs was approbating and reprobating (blowing hot and cold). This is so because having allegedly resolved not to promote applicant on 7 March 2010 it invited the respondent to an extra ordinary meeting on 28 April 2010.

There were eleven clubs each being represented by two representatives. The representatives of the applicant were requested to sit outside since the meeting had specifically been called to deal with their issue.

After deliberations the applicant was informed that the assembly had resolved to accommodate them in Division 1 by extending the league to 18 teams.

The respondent confirmed that the meeting was indeed held and also agreed that the assembly of eleven clubs was infact the majority of the teams in the league of sixteen teams. Respondent, however, went on to state that the meeting was illegal since it was not held in terms of their constitution. It pointed out that to the committee that was sent by the assembly which apologised to it. It went on to allege that it was contemplating charging the clubs concerned with bringing the game of football into disrepute.

It is difficult to understand how the respondent can charge the majority of the clubs with misconduct when they form what respondent referred to as the "Supreme body" which infact allegedly rescinded respondent's decisions.

The respondent complained that the applicant should have exhausted the domestic remedies provided for in its constitution and regulations before coming to this court. The complaint is devoid of any merit. The respondent cannot be expected to go back to the same body which it believes to have unreasonably and unfairly treated it. It no longer has faith in the respondent, rightly so, in my view. There is no guarantee that respondent would not continue giving illogical decisions. The applicant was accordingly entirely correct in abandoning the domestic remedies and have recourse to this court in the light of the urgency of the matter.

While the respondent accepted that the confused state of affairs was caused by it when it made a decision that was patently illogical, unreasonable and unfair it still opposed the confirmation of the provisional order. This, in my view, is a proper case for awarding punitive costs as prayed for by the applicant.

In the result I would confirm the provisional order in terms of the final order sought.

R. Ndlovu and Company, Applicant's legal practitioners
Messrs Munjanja and Associates, Respondent's legal practitioners