



REPORTABLE

CASE NO: SA 71/2019

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

NAMIBIA PREMIER LEAGUE

Appellant

and

**NAMIBIA FOOTBALL ASSOCIATION
HILDA BASSON-NAMUNDJEBO N.O.
FRANCO COSMOS N.O.
MATTI MWANDINGI N.O.**

**First Respondent
Second Respondent
Third Respondent
Fourth Respondent**

Coram: SMUTS JA, HOFF JA and FRANK AJA

Heard: 5 February 2020

Delivered: 19 February 2020

Summary: A dispute arose between the Namibia Premier League (the NPL) and the Normalisation Committee (the NC) from a decision made by the NC to not relegate three teams at the bottom of the league. Arbitration proceedings were instituted by the NPL in terms of Article 63 of the Namibia Football Association (the NFA) Constitution against this decision. In response, the NC responded to the referral

of the dispute to arbitration by pointing out that the Arbitration Tribunal envisaged in Art 63 upon which the NPL sought to rely was never established as the NPL knew (The NFA advised/directed the NPL to address its complaint to the Court of Arbitration for Sport (the CAS). The NPL never approached the CAS.); that the decision sought to be set aside had been endorsed by Federation Internationale de Football Associations (the FIFA) and was final and warned the NPL that if it did not implement the directive relating to the teams that would constitute the NPL for the upcoming season, the NC would have no option but to invoke sanctions which could entail suspension and/or expulsion.

Meetings were held between the representatives of the two bodies in an attempt to resolve the dispute. These talks came to nought with the NPL sticking to their position that the NPL's Constitution barred it from accepting teams in its league that have been relegated. The persistent and continued disregard by the NPL of the NC's directive led to the suspension of the NPL with immediate effect as per the NC's letter dated 2 October 2019. Despite attempts by the NPL to reverse its suspension, this could not be done. The NPL approached the court *a quo* on an urgent basis to among others, set aside its suspension.

The court *a quo* in essence held that the NPL had through its membership in the NFA agreed not to resort to the court in respect of its disputes with the NFA but to utilise the mechanisms and tribunals referred to in the Constitution of the NFA for the resolution of such disputes and hence that the court's jurisdiction to hear the matter had been ousted based on articles contained in the Constitution of the NFA – including Articles 10.3 and 64.1 which contain an undertaking by its members not to approach ordinary courts 'unless the FIFA, CAS or the NFA regulations provide for or stipulate recourse to ordinary courts'. The court *a quo* thus dismissed the application. It is against this order that the current appeal lies.

Held that, the fact of internal remedies does not oust the jurisdiction of the court. Where such remedies exist the court normally insist that parties adhere to such

remedies. The court thus declines to exercise its jurisdiction where appropriate remedies exist and, as mentioned, the court will exercise its jurisdiction where just cause is shown in any particular instance. In the present matter the internal remedies are provided for in the NFA Constitution and whether one approaches the matter from the private law perspective or an administrative law perspective would make no difference. Either those internal remedies are adequate in the circumstances or they are not. It was for the NPL to show they were not, and further, it was for the NPL to persuade a court to exercise its jurisdiction in the matter.

Further held that, the onus was on the NPL to establish good cause for the court *a quo* to ignore the Constitution of the NFA and to assume jurisdiction contrary to what was agreed to by the parties. This onus was not discharged by the NPL.

Held that, the NPL at its own peril failed to address its complaint to the CAS. The allegation that the NC refused to have any dispute arbitrated is not correct. The fact is that the NPL never referred the dispute to the CAS as it is enjoined by the Constitution of the NFA. The NPL further failed to provide an explanation why it did not do so.

Held that, the appeal is dismissed with costs, such costs to include the costs of one instructing and two instructed legal practitioners.

APPEAL JUDGMENT

FRANK AJA (SMUTS JA and HOFF JA concurring):

A. Introduction

[1] The Namibia Football Association (NFA) is the entity in Namibia which liaises on behalf of Namibian football with other bodies representing international football

and with the ultimate global organisation when it comes to the game of football. The NFA is a member of the Council of Southern African Football Associations (COSAFA), the Confederation Africaine de Football (CAF) and the Federation Internationale de Football Associations (FIFA). FIFA is at the pinnacle of the hierarchy relating to the global game of football and has a clear interest to ensure that the game is governed by the same rules and principles worldwide so as to ensure equitable competitions between national football teams. It is, in this context, thus important that at national level the game is played on the same basis as it is on the international level, as it is at national level that players will be elected to play for their countries. The rules and regulations of FIFA are thus also adhered to by regional bodies such as COSAFA and CAF as well as national bodies such as NFA.

[2] For reasons not relevant to this matter, FIFA decided to appoint a Normalisation Committee (NC) consisting of four persons to take over the day to day administration of the NFA up to the time a new congress (which is its highest decision making body) could be elected so that the administration of football in Namibia could be dealt with per the Constitution of the NFA. In essence, the NC would act in the interim as the Executive Committee of the NFA. This is so because normally the day to day administration of football in Namibia is dealt with by the NFA's Executive Committee. This Executive Committee was however dissolved and the NC was appointed to take over the day to day operations pending the election of office bearers at a Congress.

[3] The Namibia Premier League (NPL) is a voluntary association which runs and administers a football league consisting of the top tier of football clubs in the country. The NPL is a member of the NFA. The NPL has as its members the 16 top football teams or clubs in the country. Although this number stays constant, provision is made for the bottom three teams or clubs to be relegated to the First League and to be replaced by three of the top teams or clubs in the First League on an annual basis. There is a similar promotion and relegation provision between clubs competing in the First and Second Leagues. The clubs in the First and Second Leagues are not members of the NPL.

[4] A dispute developed between the NPL and the NC about the teams that will compete at the NPL level for the 2019/2020 season. The background to this was that in the previous season the First and Second Leagues were wholly inoperative. The NPL insisted that the three clubs at the bottom of its league had to be demoted (one of them actually lodged an appeal against a decision which penalised it for using an unregistered player which caused it to fall within the bottom three NPL teams). The NC directed that there would be no relegation as the First and Second Leagues were inoperative.

[5] The NPL took issue with the fact that the teams that were relegated in terms of its rules would be reinstated to the Premier League and instituted arbitration proceedings pursuant to Art 63 of the NFA Constitution against the decision of the NC to direct that the three relegated teams would form part of the Premier League for the upcoming season. Article 63 of the NFA Constitution provides for, among others, the

creation of an independent Arbitration Tribunal to deal with disputes between the NFA and any of its members.

[6] The NC responded to the referral to arbitration by the NPL, pointing out that the Arbitration Tribunal envisaged in Art 63 upon which the NPL sought to rely was never established to the knowledge of the NPL, that the decision sought to be set aside had been endorsed by FIFA and was final and warning the NPL that if it did not implement the directive relating to the teams that would constitute the NPL for the upcoming season, the NC would have no option but to invoke sanctions which could entail suspension and/or expulsion.

[7] The stand-off between the NPL and NC in respect of this dispute continued despite meetings being held between representatives of these two bodies to attempt to resolve the issue. In the course of these events, the NC informed the NPL on 4 September 2019 that if it intended to challenge the directive given in respect of the teams that would constitute the Premier League for next year, it had to approach the Court of Arbitration for Sport (CAS). The discussions between the representatives of the parties came to nought and the Congress of the NPL (its highest organ) reiterated the stance that the NPL's Constitution barred it from accepting teams in its league that have been relegated. This led to the NC informing the NPL per letter dated 2 October 2019, that due to its 'persistent and continued disregard' of the directive relating to which teams would constitute the Premier League for the upcoming season, it was suspended with immediate effect. In this letter it is also pointed out that

the suspension would last 'until the next Congress, unless the Executive Committee has lifted it in the meantime'.

[8] On receipt of the letter of suspension, the NPL's Executive Committee met and resolved that the NPL 'should desist from rushing to court on an urgent basis' but should seek to persuade the NC to uplift the suspension. To this end, various attempts were made to achieve this goal without success. The NPL informed the NC that the matter was urgent and that if not resolved the NPL would approach the court for a declaration and *mandamus*. As it turned out, the matter could not be resolved and the NPL approached the court *a quo* on an urgent basis to, among others, set aside its suspension.

[9] The court *a quo* in essence held that the NPL had through its membership in the NFA agreed not to resort to the court in respect of its disputes with the NFA but to utilise the mechanisms and tribunals referred to in the Constitution of the NFA for the resolution of such disputes and hence the court's jurisdiction to hear the matter had been ousted. The court *a quo* thus dismissed the application. It is against this order that the current appeal lies.

[10] For the sake of completeness, it should be mentioned that in the court *a quo*, the Minister of Sports, the Namibia Sports Commission as well as 18 delegates to the upcoming Congress of the NFA were also cited as respondents. Only the members of the NC, ie the current respondents, opposed the application *a quo* and hence they are the only respondents in respect of this appeal.

B. Relevant provisions of NFA and NPL Constitutions

[11] The Constitution of the NPL deals with the relationship between itself and its members but it does have references to the NFA which are of relevance. The 'football season' is defined with reference to the period prescribed by the Executive Committee of the NFA. The NFA is defined as the body 'controlling association football within Namibia' and 'Association Football' is defined as the game controlled by FIFA. Article 1.6 of the NPL Constitution contains a statement to the effect that 'the NPL is responsible for the administration and management of the NPL competitions subject to compliance with the NFA Constitution and decisions . . .'. The fact that the NFA is the controlling body of football within Namibia is further illustrated by Art 2.3 which lists as an objective of the NPL to 'respect . . . the statutes, regulations, directives and decisions of FIFA, CAF, COSAFA and the NFA . . .'. In terms of Art 7.1 'the bodies and officials' of the NPL have the same obligation to observe the directives of the aforementioned bodies. In terms of Art 64 the promotion and relegation of teams to and from the NPL must be in accordance with the 'NFA Manual on Rules and Regulations'.

[12] The NPL is defined in its own Constitution as being constituted 'pursuant to the terms of the NFA Constitution and it is this Constitution that contains most of the articles relevant to the present matter. As pointed out in the introduction, the NFA is the body at the apex of all football played in Namibia and it is a member of FIFA and

other regional associations already mentioned. The NPL is a member of the NFA. To be admitted as a member of the NFA, declarations must be made in terms of Art 10.3 as follows:

- '(i) a declaration that it will not take matters of interpretation and application of FIFA, CAF and NFA statutes, regulations, decisions and directives to ordinary courts, unless the FIFA, the CAF or the NFA regulations provide for or stipulate recourse to ordinary courts;
- (ii) a declaration that it recognises the judicial bodies of the NFA and the Court of Arbitration for Sport (CAS) in Lausanne, as specified in those statutes.'

[13] As far as the obligations of the members of the NFA are concerned those are stipulated in Art 13 and the following are relevant to this appeal. Members must adhere to the matters mentioned in Art 10.3 which includes the undertaking not to approach ordinary courts mentioned above. Members must 'comply fully' with directives and decisions of the NFA. Members must have a clause in their respective constitutions preventing recourse to the ordinary courts in respect of disputes between them and their members. The Constitution of the NPL has such a clause. I deal with the clause in the constitution of the NFA below which is similar to the clause in the NPL Constitution. Violating any of the above obligations may lead to the sanctions provided for in the Constitution.

[14] As mentioned above, the Executive Committee was substituted with the NC by FIFA. This is not in dispute although there is some issue about the exact mandate of the NC. In my view, it is clear that the NC was to exercise all the powers of the

Executive Committee until new office bearers would be elected at the next Congress and matters would return to normal. The powers of the Executive Committee are set out in Art 35 of the NFA Constitution and include the powers to 'decide the place and dates and number of teams participating in competitions of the NFA' and to 'suspend a member of the NFA provisionally until the next Congress'. In general, the Executive Committee has all the powers not reserved for Congress or some other body of the Constitution of the NFA.

[15] When it comes to suspension, the Executive Committee may do this where a member 'seriously violates its obligations'. Such suspension 'shall last until the next Congress, unless the Executive Committee has lifted it in the meantime'. At the Congress, such suspension must be confirmed with a two-third majority otherwise the suspension will be lifted. The suspension takes effect immediately and a suspended member loses all the rights of membership during the suspension. In the present matter, it means the NPL will not be entitled to send four delegates to the Congress.

[16] In terms of Art 63, the NFA must create an 'independent Arbitration Tribunal' to deal with 'all internal disputes between the NFA, its members, players, officials . . .' and the Executive Committee must draw up the 'regulations regarding the composition, jurisdiction and procedural rules of this Arbitration Tribunal'. It is however, expressly stated that:

'As long as within the territory of NFA no Arbitration Tribunal has been installed and recognised by the Congress of NFA, any dispute of national dimension may only be

referred in the last instance to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.'

I mention in passing that where decisions of FIFA are in dispute Art 65 provides that an appeal against such decisions also lies to CAS.

[17] As mentioned in the introduction, the NPL initially attempted to appeal the directive as to which teams should constitute the Premier League to the independent Arbitration Tribunal. The NC pointed out to it that the Tribunal was not in existence and in correspondence alerted the NPL them that the only appeal that it had was to the CAS.

[18] When it comes to the courts to resolve issues between the NFA and its members, Art 64 provides as follows: ('Ordinary Courts' are defined as 'state courts which hear public and private legal disputes'.)

'Article 64.1 Jurisdiction

The NFA, its Members, Players, Officials and match and player's agents will not take any dispute to Ordinary Courts unless specifically provided for in these Statutes and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of NFA, the Arbitration Tribunal recognised by NFA or the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. Disputes arising from association football conducted under the auspices of FIFA are of a special character: They require speedy resolution and the ordinary courts of law are ill suited for the purpose. It is for that reason that FIFA and the NFA place resolution of such disputes outside the jurisdiction of the ordinary courts of the land. Every member, affiliate, club, official and individual who voluntarily accepts to participate in association football in Namibia under the auspices of FIFA

and NFA, does so with the full knowledge, recognition and acceptance of that underlying premise and covenants to be bound by it.'

[19] It is clear from the manner in which the administration of football is conducted that all disputes in relation thereto are sought to be catered for in the internal processes and procedures with the ultimate say reserved for CAS. This not only ensures processes which normally lead to quicker resolutions than the ordinary court processes but from an international perspective leads to a uniform approach to football issues on a global scale. To allow state courts jurisdiction in respect of these issues may potentially lead to conflicting positions prevailing in different countries. This will obviously be detrimental to the administration and reputation of football as what may be considered lawful in one country may be unlawful in another. Where there is only one final decision maker (CAS) it is much easier to ensure consistent and universal application of the rules and regulations of football on a global basis.

C. Internal remedies and procedures

[20] Where a voluntary association's constitution provides for an appeal to a domestic appellate or review tribunal, this is an avenue an aggrieved member of the association must generally utilise as it would normally be a cheaper and more expeditious route than a court of law and be presided over by persons with some background and knowledge as to the workings of the association.¹ Where the provision in the constitution of a voluntary association imposes an obligation on the part of members to exhaust all domestic remedies and further excludes the court's

¹ *Strydom v Administrator of the OFS* 1953 (2) SA 133 (O) at 140 and *Jockey Club of South Africa v Feldman* 1942 AD 240 at 251-252.

jurisdiction until domestic remedies have been exhausted the courts will be very loath to exercise jurisdiction prior to the contractually agreed remedies being exhausted.² This is similar to the position where parties in a contractual context agree to an arbitration clause.³ Members of any voluntary association join such organisation on the basis that they agree to abide by such organisation's constitution and in this manner they and the organisation are contractually bound to each other.⁴

[21] There are exceptions to the general rule stated above. Thus, where the appeal tribunal provided for in the constitution of the voluntary association does not have the power to set aside the irregularity complained of, a court of law may interfere.⁵ Similarly where the procedure provided for in the constitution of the voluntary association has broken down or the appropriate remedy cannot be obtained by use of the internal procedures, a court will intervene.⁶

[22] When it comes to irregularities in the proceedings of voluntary associations, it is apposite that I mention two in general terms. First, where an association (through its relevant body) exceeds the powers granted to it or exercises powers outside its constitution, it would amount to irregularities. Both these instances are examples of such body acting *ultra vires* its powers. Second, where an association takes penal steps against a member, such member can, subject to the constitution of the

² *Strydom's case* above at 150G-H, *Jockey Club case* above at 362.

³ *Namibia Wildlife Resorts v Ingplan Consulting Engineers and Project Managers (Namibia) (Pty) Ltd & another* (SA 55-2017) [2019] NASC (12 July 2019) paras [27], [28] & [29].

⁴ *Nowases & others v ELCRN & another* 2016 (4) NR 985 (HC).

⁵ *Galloway v Executive SA Boilermakers, Innworkers and Shipbuilders Society* 1921 WLD 20 at 26 and *Williams & others v De Wet* 1946 CPD 208 at 213.

⁶ *Jamile & others v African Congregational Church* 1971 (3) SA 836 (D) 843.

association, expect that there will be no violation of the principles of natural justice in the consideration of the allegations levelled against the member. This in essence means that such member is entitled to a fair and impartial consideration of his or her or its case.⁷ Under this principle resorts the maxim *audi alteram partem* which entails that fair notice must be given of the charge preferred against the member⁸ and that the accused member will be entitled to present a defence to the charge.⁹

[23] I mention the two irregularities above which may lead to courts intervening and setting the decision aside because the same principles apply when it comes to administrative decisions. It is however important to distinguish between decisions by or on behalf of voluntary associations which are tested against their constitutions and rules on the basis that members voluntarily subscribe thereto which generally falls squarely within the domain of the private law and acts by administrative officials which fall within the domain of the public law and relate to the actions of the officials in the exercise of their public powers. One must thus be careful to simply transpose the law as developed as part of the administrative law which relates to the exercise of public duties to the law in respect of voluntary and private associations which is based on consensus.

[24] Similar principles may however apply both in private and public law. Thus, where persons act outside their powers these actions are set aside on the basis of

⁷ *Kimmelman v Amalgated Society of Woodmakers of SA* 1941 WLD 202 at 220 and *Adendorff v SA Medical Council* 1942 WLD 122 at 128.

⁸ *McMillan v Locomotive Driver's and Firemen's Mutual Aid Society* 1922 CPD 66 and *Nugent v Morgan & others* 1932 CPD 181 at 184.

⁹ *Kimmelman* case above at 219 and *Helderberg Bucheries v Mun Val Court Somerset West* 1977 (4) SA 99 (C).

their acts being *ultra vires*. Where internal remedies are provided for, the approach mentioned above applies equally to decisions of voluntary associations and decisions of administrative officials. In the present matter the counsel for appellant submitted that public law applied as the NC in essence exercised a public duty when it suspended the NPL. Because the approach of the courts when it comes to the duty to exhaust internal or domestic remedies is the same when it comes to voluntary associations or administrative decisions, it is not necessary to categorise the decision of the NC and I decline to do so.¹⁰ It must however be pointed out that the South African decisions referred to by counsel for the appellant in support of his submission dealt with decisions of Arbitration Tribunals and not the decisions of an Executive Committee and that the South African Legislation referred to in those decisions does not apply in this country where the common law, subject to the Constitution applies.¹¹

[25] It follows from what is stated above that the fact of internal remedies do not oust the jurisdiction of the court. Where such remedies exist, the court normally insists that parties adhere to such remedies. The courts thus decline to exercise its jurisdiction where appropriate remedies exist and, as mentioned, the courts will exercise jurisdiction where just cause is shown in any particular instance. In the present matter, the internal remedies are provided for in the NFA Constitution and whether one approaches the matter from the private law perspective or an administrative law perspective would make no difference. Either those internal remedies are adequate in the circumstances or they are not. It was for the NPL to

¹⁰ Lawrence Baxter *Administrative Law* (1984) at 720-723.

¹¹ *Ndoro & another v South African Football Association & others* 2018 (5) SA 630 (GJ) (24 April 2018) and *Louisvale Pirates v South African Football Association* (40614/2011 [2012] ZAGPJHC 78 (4 May 2012)).

show they were not, it was for the NPL to persuade a court to exercise its jurisdiction in the matter.

[26] Counsel for the appellant submitted that the appeal to CAS was not an internal remedy as CAS operated outside the jurisdiction of the High Court of Namibia. He further submitted that a referral to CAS was a discretionary remedy, seeing that the word used in Art 63 when no independent Arbitration Tribunal is in place is that disputes 'may' be referred to CAS.

[27] The reference to internal remedies has never been interpreted to be a reference to tribunals in Namibia. The term has been used to refer to tribunals specifically created in respect of certain identified or identifiable disputes. Thus in large construction contracts, the final tribunal is often stipulated to be an international one situated abroad. The fact that the final Tribunal is situated abroad may in certain circumstances be a factor a court will take into consideration when considering whether to exercise its jurisdiction despite an internal remedy being in place. This however does not detract from the fact that a referral to CAS in the present context is an internal remedy agreed to between the NPL and the NFA.

[28] To focus on the word 'may' in Art 63 of the NFA Constitution is to simply read it out of context. Where there is no independent Arbitration Tribunal, a dispute between the NFA and any of its members 'may only be referred in the last instance to' CAS. It is clear from Art 64 that by agreement the ordinary courts should not be involved. The first avenue is thus to appeal to the independent Arbitration Tribunal if it has been

established. If it has been established CAS cannot be approached. Where such independent Arbitration Tribunal has not been established, the only remedy is to appeal to CAS. It is only in this case that CAS may be approached. In other words, the only body that may be approached is CAS. The word 'may' is qualified by the word 'only' and hence, whereas an aggrieved member has a discretion to decide whether to appeal or not once a decision is made to appeal, it can only be to CAS.

D. The complaint

[29] The gist of the NPL's case is set out in paras 19 and 20 of its founding affidavit as follows:

'Ordinarily the applicant and first respondents' constitution and statutes discourage and prohibit a member to approach municipal courts. The relationship between the applicant and the first respondent is contractual. As a result, the prohibition to approach municipal courts is not a shield to the first respondent when it acts in contravention of its Statutes and rules. The prohibition is usually meted with harsh punishment of temporary expulsion from FIFA, the international body of football to which the first respondent is affiliated.

In what follows in this affidavit is my explanation how the applicant sought to exhaust internal remedies and appeal to the NC to desist from breaching its own Statutes and rules, and thereafter appealed to its conscience to uplift its unlawful suspension of the applicant. Especially in circumstances where it is acting in conflict of interest, with ulterior purpose, without adhering to the principles of audi, and abuse of office in breach of its own Statutes and rules. In any event, the first respondent has refused to have the pith of the issues arbitrated and its rules make no provision for urgent injunctive relief.' (*sic*)

[30] It is clear from the quoted paras in the founding affidavit that the NPL was aware of the fact that the dispute was one which essentially fell into the private law domain. The assistance of the court was sought because it is alleged that the NC committed a number of irregularities in dealing with the NPL and that there was no appropriate remedy available to it by using the internal remedies in place in terms of the Constitution (statutes) and rules of the NFA.

[31] The NPL instituted arbitration proceedings to challenge the directive of the NFA that the upcoming Premier League had to consist of the same teams as the previous season. It was pointed out to the NPL that the Arbitration Tribunal that the NFA had to establish was not in place and that the NPL had to address its complaint to the CAS. The allegation that the NC refused to have any dispute arbitrated is not correct. The fact is that the NPL never referred the dispute to the CAS as it is enjoined by the Constitution of the NFA to do as the Arbitration Tribunal was not in place. That there was and is no Arbitration Tribunal in place is not the fault of the NC as alleged but the fault of the Congress of the NFA – where the NPL had four representatives – as the Congress did not establish the Tribunal. Maybe the Executive Committee at the time omitted to present Congress with the regulations regarding the composition, jurisdiction and procedural rules and hence no Arbitration Tribunal could be established but the blame for this cannot be laid at the door of the NC.

[32] The NPL was suspended on 2 October 2019. Thereafter communications followed between the NPL and the NC in an attempt to resolve the dispute between

them so that the NC could lift the suspension. This came to nought and on 12 October 2019 the NC sent out an invitation for a Congress of the NFA to be held on 9 November 2019. The agenda for this Congress did not mention the suspension of the NPL. This was despite the fact that the Constitution of the NFA provides that a suspension of the Executive Committee must be ratified with a two-third majority at the next Congress. There was initially an invitation for a Congress on 2 November 2019 which caused the NPL to commence with preparations for the application to the court *a quo*. Thus on 23 October 2019 the NPL indicated to the NC that it 'is preparing urgent papers to interdict the extraordinary Congress'.

[33] It seems that the NPL was concerned that the Congress would proceed without its four representatives being present to put its case and be able to vote. The suspension was however not on the agenda. As things stood the only substantial issues on the agenda were the appointment of the Appeals Committee, the approval of the Annual Financial Statements of March 2018 and the appointment of auditors.

[34] Whereas NPL in the application seeks to interdict the Congress from going ahead and its suspension to be set aside, it surprisingly does not take issue with the fact that its suspension is not on the agenda as it should have been. Despite seeking to attack its suspension and asserting that the internal remedy is or was not available prior to the Congress, it gives no reason why it could not have approached the CAS prior to the Congress on an urgent basis to challenge its suspension. There is also no reason given why an appeal could not have stopped the Congress going ahead without the suspension being on the agenda. Counsel for the NFA confirmed that the

first substantial point at the next Congress will be the suspension of the NPL and that it will be granted an opportunity to state its defence to the suspension. He further confirmed that if the suspension is not supported by the necessary majority, the delegation of NPL will be allowed to participate in the Congress.

[35] As already indicated in terms of the NFA Constitution, the NPL had to approach the CAS for relief. There is no explanation at all as to why this was not done. In fact, it seems that the thrust of the NPL's case is that in view of the alleged irregularities it is entitled to approach the court irrespective of the internal processes provided in the Constitution of the NFA. In view of the express provisions of the NFA Constitution as to how disputes between members and the NFA are to be dealt with, the approach by the NPL was not correct. The onus was on the NPL to show cause why the court should not compel it to adhere to the procedures and processes agreed to when it became a member of the NFA. Here it must be borne in mind that the dispute between the NPL and the NFA started with a dispute over whether the former was obliged to follow the directive from the latter to keep the teams making up the Premier League unchanged for the upcoming season. This decision, the NPL sought to take on arbitration to the independent Arbitration Tribunal that was non-existent. The NC informed the NPL about the non-existence of the Tribunal on 20 August 2019 and on 4 September 2019 informed it that the correct body to approach was the CAS. Despite these communications, the NPL obtusely stuck to its position that it would not comply with the directive with regard to the teams that should make up the Premier League and would not make any approach to CAS.

[36] In the answering affidavit, the deponent on behalf of the NC alleges that the NPL can obtain adequate relief at CAS and points out that the NPL has not demonstrated that the internal remedies could not provide substantial redress to it. Both parties are very coy as to the details relating to the available internal remedies. Nevertheless on behalf of the NC, it is contended that CAS 'is empowered to hear urgent matters and grant urgent relief'. This is not disputed by the NPL at all. As pointed out above, it was for the NPL to establish good cause for the court *a quo* to ignore the Constitution of the NFA and to assume jurisdiction contrary to what was agreed to by the NPL and the NFA in terms of the Constitution of the latter body. This onus the NPL did not discharge. The result is thus that sufficient cause was not established for the court to exercise jurisdiction in the face of the internal remedies provided for in the Constitution of the NFA.

[37] In the result, the appeal is dismissed with costs, such costs to include the costs of one instructing and two instructed legal practitioners.

FRANK AJA

SMUTS JA

HOFF JA

APPEARANCES

APPELLANT:

W R Mokhare SC (with him G Narib)

Instructed by Dr Weder, Kauta & Hoveka
Inc., Windhoek

RESPONDENTS:

S Namandje (with him T Chibwana and
M Ntinda)

Of Sisa Namandje & Co. Inc., Windhoek

