

**REPUBLIC OF SOUTH AFRICA****IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED:

9 February 2024  
DATE

  
SIGNATURE

**CASE NO: 037446/ 2022**

In the matter between:

**R I LEDWABA**

**First Applicant**

**S N MOHLABENG**

**Second Applicant**

and

**SOUTH AFRICAN FOOTBALL ASSOCIATION**

**First Respondent**

**D A JORDAAN**

**Second Respondent**

THE NATIONAL EXECUTIVE COMMITTEE OF THE

SOUTH AFRICAN FOOTBALL ASSOCIATION

Third Respondent

THE GOVERNANCE COMMITTEE OF THE SOUTH

AFRICAN FOOTBALL ASSOCIATION

Fourth Respondent

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## JUDGMENT

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*(The matter was heard in open court but judgment was delivered electronically and uploaded onto CaseLines to the electronic files of the matter and electronically submitted to the parties/their representatives on CaseLines. The date of uploading onto CaseLines is deemed to be the date of the judgment)*

Before: **HOLLAND-MUTER J:**

[1] The applicants, both involved in the election bid for the presidency of the First Respondent, the South African Football Association (**SAFA**), seek to overturn that election after losing the election resoundingly. SAFA opposes the application seeking to protect the choices of its members and the election process. SAFA relies on the enshrined rights of its members in the SAFA Statutes read with the FEDRATIONAL INTERNATIONALE de FOOTBALL ASSOCIATION (FIFA) Statutes.

[2] The applicants in this application, at first sought two orders, the first directing SAFA to arbitrate their alleged disputes and secondly in the alternative to review SAFA's recent elections and to reinstate the applicants in power. It however appears that the applicants have abandoned the second alternative relief sought. Mr Stockwell on behalf of the applicants informed the

court from the outset that the only issue before the court is whether SAFA ought to have referred the applicants' dispute to arbitration. This is also clear from the replying affidavit at para 13.2 and the heads of arguments at para 45.

[3] Mr Arendse confirmed the narrowing of the issues before the court.

[4] In his heads of arguments on behalf of the applicants, Mr Stockwell poses that the only question which the court is required to entertain in the present application is whether an arbitral dispute exists between the parties and whether this dispute should be referred for determination by way of arbitration (para 2 of the heads of argument).

[5] The first applicant, according to the founding affidavit, and others, had in the past taken issue with the manner in which the SAFA and its officials attended to the affairs of SAFA. These objections and complaints have been a continuous and recurring topic, the applicant, and apparent others, felt that SAFA continued to fail the issues and these are central in the applicants' present complaints against SAFA and the other respondents.

[6] The alleged disputes from the first applicant, and for that reason other alleged disgruntled persons, came to nothing in previous litigation. It is however not necessary to dwell back into the past suffice to state that the relationship between the first applicant and in particular the second respondent is without affection.

[7] The first applicant is no novice in the ways and organization of SAFA. She served on the National Executive Committee ("NEC") and raised several complaints while in office. It is clear from numerous documentation annexed to the answering affidavit that she was and is still involved in the affairs of SAFA. Although a natural person, the first applicant was affiliated to one of

SAFA's members. Membership of SAFA and the importance thereof will be dealt with below. It is important to take note that natural persons cannot become members of SAFA. Only structures as set out in article 10 of SAFA's Statutes can be members of SAFA.

[8] The final drop in the barrel leading to the current disgruntledness of the first applicant, and to the overflowing of feelings was the resounding loss by the first applicant, and in a way also the second applicant, in their bid for presidency of SAFA at the Congress held on 23 June 2022. There was an elective congress held on 26 March 2022 where members to the NEC were elected. This election process, and most likely the result thereof, is the main cause of the applicants' dissatisfaction of the applicants.

[9] The first applicant associated herself with an application brought in the Cape Town High Court on 1 June 2022 to interdict the national congress for 26 June 2022 from taking place. The application was dismissed resulting with a punitive cost order against the applicants. A second urgent application was set down in the Pretoria High Court for 6 June 2022 to set aside the results of the elective congress held on 26 March 2022. The matter was struck from the roll.

[10] Various correspondence were exchanged between SAFA (its attorneys) and the first respondent without any success. The letter from SAFA to the first applicant (AA41 to the answering affidavit) remained unanswered to today, leading to the current application before the court instituted on 1 November 2022. The relief sought herein is narrower if compared with the previous applications.

#### **APPLICATIONS IN GENERAL:**



[11] It is trite that a party should set out his/her case as clearly as possible in the founding affidavit. Although this is not an absolute rule, the court has a discretion, to be exercised judicially, to allow a new in a replying affidavit. It is however only in exceptional circumstances where a court will allow it. See **Erasmus, Superior Court Practice Vol 2 D1-66.**

[12] The applicants, probably realising that their case was rather weak, in a further attempt to derail the respondents, raised the issue of a dispute of fact in reply. This argument cannot fly. The applicants' mere denial of the nomination process does not amount to a genuine dispute of fact. The **Plascon-Evans Rule (Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984(3) SA 623 (A) at 634-5** as confirmed in **Wightman t/a Construction v Headfour (Pty) Ltd and Another 2008(3) SCA** at par 13 is clear. A court will find it extremely difficult to find that the test to determine whether a genuine dispute of fact exist, is satisfied where a party rests his case on a bare denial or on ambiguous averments. Similar a court will be very reluctant to find that a dispute exist on vague unsubstantiated averments. Application procedure is a robust determination of facts on affidavit.

[13] Courts should be astute to prevent an abuse of this process where finding that a dispute of facts exists, will only delay the unavoidable. I am of the view that in the present matter the applicants will not stop in their attempts to derail the business of SAFA because they are aggrieved by the outcome of the election.

[14] In casu the applicants did not allege in the founding affidavit that there was no nomination process, they allege that three people were nominated to serve on the Governance Committee. Several non-issue complaints were raised at the congress but the chair dealt with all as required by the Statures.

[15] In reply the applicants no longer persist with their argument that the minutes of the congress were falsely recorded, that the election result was flawed and that no chairperson was appointed, except that the nomination process was flawed. I differ from the applicants in this regard and in my view the minutes are clear on the nomination process and the elective process and that no irregularity occurred. The election was chaired by the chairperson of the Governance Committee, although he was assisted by Mr Tselane.

[16] I am satisfied that the argument on behalf of the applicants that a genuine dispute of facts exists in the instance is stillborn and should be rejected.

#### **MEMBERSHIP:**

[17] Membership of SAFA is regulated by Article 10 of SAFA's Statutes. There is no provision for individuals to become members of SAFA. Individuals must be a member of any of the recognised members (structures) in Article 10. Both applicants can therefore not be a member in person and can only participate in any matter in SAFA through the structure to which they belong. For purposes of this judgment it is not necessary to go into detail of membership and exercising of rights by members. Articles 10, 11 and 12 are clear on membership.

[18] The Statutes (in particular Article 2) is clear on the aims and objectives of SAFA. Article 2.11 deals with the settling of disputes between members or persons connected with football within the jurisdiction and interests of SAFA.

[19] Section 58 of the Statutes deals with the establishment of an Arbitration Tribunal and how to deal with disputes. Article 58.4 provides for arbitration of disputes where any member, affiliate of a member, or individuals prefers to, that disputes may (my underlining) be referred to arbitration for resolution. If

the ordinary meaning is set to the word "may", it is clear that it is not compulsory to refer.

[20] The alleged disputes raised by the applicants refer to what transpired at the election congress and the election itself. It is clear from the minutes that the chairperson dealt with the problems raised and that it was finalised. I can find no fault with the procedure at the election and the applicants were given the opportunity to raise concerns.

[21] The question whether the applicants, by "subjecting themselves" to the jurisdiction of SAFA, change the standing of the applicants in any way. By "subjecting" themselves to the jurisdiction, the applicants accepted the contents of the rules, including Article 59. Their status is not now members. Article 59 provides that electoral candidates fall outside the normal jurisdiction of SAFA Statutes and unless specifically provided for in the Statutes, no dispute may be taken to Ordinary Courts unless specifically provided for. There is no such provision regulating that the dispute may be taken to the court. For this reason alone the application ought to be dismissed.

[22] In the matter before this court the applicant made an about turn with regard to whether she is affiliated to a recognised structure or member of SAFA. In the founding affidavit she clearly stated that both applicants were members of regional structures under the auspices of SAFA. In the replying affidavit she back tracks arguing that they "subjected" themselves to SAFA's jurisdiction. This was clearly in reply to the answering affidavit (par 118.4) that she no longer belonged to any member structure.

[23] The respondent clearly confronted the applicants on their alleged membership of SAFA through existing member structures. The letter on behalf of SAFA dated 20 September 2022 (annexure AA41 CaseLines 004-857) is clear in this regard. SAFA stated that the first applicant was no longer a member or



an official of SAFA and the second applicant, although a member of the Tshwane Regional Structure, was not mandated at all by the structure to request arbitration. Both applicants remained silent on this aspect and it stands unopposed.

#### **COSTS:**

[24] The purpose of an award of costs is to indemnify a successful party who has incurred expenses in instituting or defending a matter. **Erasmus supra D5-1**. When deciding on costs, the court has a discretion and to exercise this in a judicial manner. It must be exercised on grounds upon which a reasonable person could have come taking into account the applicable facts before the court, facts arising from the particular case before the court.

[25] The court will consider who the successful party is; what the success is, conduct of the unsuccessful party during litigation, the reasonable need for litigation, any negligence of the successful party, conduct of the legal practitioners and the type of proceedings. The list is not exhaustive. See **Herbstein & Van Winsen, The Civil Practice of the High Courts of South Africa, 5<sup>th</sup> ed Vol 2 p 53-969**.

[26] I am thankful for the professional way in which both counsel presented their arguments and no finger can be pointed at any one. Their written heads of arguments were extremely helpful. The matter was not the ordinary run of the mill kind but rather intricate. They were very helpful in identifying the applicable articles in the SAFA Statutes making it much easier to consider the matter.

[27] The applicants however continued in a matter where they had no right to seek arbitration of issues determined at the election process. There are no



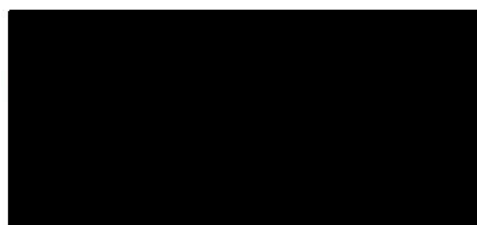
grounds to review the elections and they simply refused to accept the outcome of the elections. The grounds for review were constantly shifted, even when the matter was argued. Their conduct in my view justifies that costs be awarded on an attorney and client scale.

[28] Both parties employed senior counsel, the respondent also employed a junior counsel to assist Mr Arendse. I cannot fault this at all. The intricate nature of the matter in my view justifies two counsel.

[29] I am of the view that the applicants have no right to refer their dispute to arbitration and I make the following order:

**ORDER:**

The application is dismissed with costs, costs including two counsel (one being Senior Counsel) and on an attorney and client scale.



**HOLLAND-MUTER J**

Judge of the Pretoria High Court

9 February 2024

Matter heard on 13 November 2023

Judgment delivered on 9 February 202

**On behalf of Applicants:**

Adv R Stockwell SC

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**On behalf of Respondents:**

Adv N Arendse SC

Adv E Cohen

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