



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU

CIVIL SUIT NO. 28 OF 2017

BETWEEN

DAVE COLLINS AND MAURICE OTIENO

suing as the officials of

MUHORONI YOUTH FOOTBALL CLUBPLAINTIFF

AND

NICK MWENDWA, DORIS PETRA AND

ROBERT MUTHOMI sued as officials of

KENYA FOOTBALL FEDERATION1ST DEFENDANT

KENYAN PREMIER LEAGUE LIMITED 2ND DEFENDANT

RULING

Introduction

1. The Muhoroni Youth Football Club (“the Club”) is a community based football club supported by the area community including widows and orphans It supports 30 players, 14 technical bench members and 18 other support staff. In short, it plays a pivotal role in the local community by providing socio-economic assistance to disadvantage youth. According to the plaintiffs, the team has performed well in the Kenya Football Premier League and in 2016 it was placed as the 8th best team and due its performance, it attracted a significant fan base whose expectation is that it will continue to play in the major league.

2. The plaintiffs have brought this suit on behalf of the Club seeking the following prayers in the plaint:

A. A declaration that the earlier decision by the defendants to relegate the plaintiff in the 2017 Kenyan Premier League adversely affected their performance which led to their poor ranking at the end of the league.

B. A permanent injunction do issue to restrain the defendants by themselves, their agents, servants and/or employees or otherwise jointly and severally from and an order restraining the defendants from relegating the plaintiff from the 2017 Kenyan Premier League and include the plaintiff in the 2018 fixtures.

C. Costs of this suit plus interest.

3. In addition to the plaint, the plaintiff moved the court by a Notice of Motion dated 28th December 2017 seeking the following order against Kenya Football Federation (“FKF”) and Kenya Premier League Limited;

[3] THAT this Honourable Court do issue a conservatory order restraining the respondents from relegating the applicant from the 2017 Kenya Premier League pending the hearing and determination of the suit herein.

Plaintiffs’ Case

4. As can be seen from the prayers in the plaint and application, the issue in contention is whether this court should restrain the respondents from relegating the Club from the 2017 Kenya Premier League (“KPL”). It is not in dispute that the Club was placed 18th position at the completion of the 2017 KPL season. According to the deposition of Collince Dave, the Club’s General Manager, its dismal performance and the consequent relegation was because of factors beyond its control following disputes in the KPL and subsequent judicial intervention.

5. The plaintiffs’ complaint is that in February 2017, the Club was one of the 16 clubs qualified to compete in the 2017 KPL season but before it commenced, the respondents suspended the KPL and relegated the Club and Sofapaka FC. Sofapaka FC moved the Sports Tribunal established under the **Sports Act, Act No. 25 of 2013** contesting the relegation. The matter was resolved by the Tribunal on 18th March 2017. Following the decision, the Club was allowed to play in the KPL. The plaintiffs stated that the effect of the Tribunal decision was that the *Club Licencing Guidelines*, which governed participation in the KPL, were declared null and void. The plaintiffs averred that thereafter another suit was filed in the High Court contesting the constitutionality of the *Club Licencing Guidelines*; **Nairobi HC Petition No. 59 of 2017, Sam Nyamweya v Sports Disputes Tribunal, Football Kenya Federation and Kenya Premier League** where the court made the following orders:

a. A declaration be and is hereby issued that the Football Kenya Federation- Kenyan Premier League (FKF-KPL) agreement is valid.

b. A permanent injunction be and is hereby issued restraining the second Respondent from interfering with the third Respondents Rights to manage and own the Kenya Premier League during the period of the said agreement.

c. A declaration be and is hereby issued that the unilateral post-season relegation/promotion and addition of clubs by the second Respondent violated the agreement and also the sporting principle of merit and is therefore null and void.

d. A declaration be and is hereby issued that the Kenya Premier League shall have a maximum of 16 teams during the 2017 season, consisting of the fourteen (14) Kenyan Premier League teams which qualified for sporting merit on the field during the 2016 season plus the two (2) highest ranked clubs at the end of the 2016 season in the Football Kenya Federation's National Super League.

e. A declaration be and is hereby issued that the introduction and adoption of the FKF Club Licencing Regulations at the Football Kenya Federation AGM was irregular and therefore null and void for all purposes.

f. An order be and is hereby issued directing both the FKF and KPL to fully respect and implement the FKF-KPL agreement during the period 2017-2020.

g. No orders as to costs. [Emphasis mine]

6. The plaintiffs also advanced the argument that the Club's relegation was done without the mutual agreement in accordance with Clause 4 of the Agreement dated 24th September 2015 between FKF and Kenya Premier League Limited which provides:

4.1 There must be relegation and promotion between the top-tier KPL and the second tier FKF National League. The number of relegated and promoted clubs between the top and second tier leagues will be set by mutual agreement in the JEC and shall always be done before the start of the season in which it applies.

7. The plaintiffs further contended that following relegation, the Club's best players left for greener pastures and the team lost sponsorships which were its lifeline. The cumulative of these events, the plaintiffs argued, was that the Club performed poorly leading to relegation. In the circumstances, the plaintiffs submit that if an injunction is not granted, the Club will suffer irreparable loss and damage.

Respondents' Case

8. The respondents opposed the application on the basis of the replying affidavit of Robert Muthuri, the Secretary General/Chief Executive of FKF. Their case was that following resolution of the case before the Tribunal, the Club was re-admitted into the 2017 league comprising 18 teams and upon conclusion, it came last and was relegated alongside Western Stima FC while Vihiga United FC and Wazito FC were promoted from the National Super League. He further deponed that the 2018 KPL and National Super League fixtures have already been released with the former commencing on 2nd February 2018 and the latter on 10th February 2018 hence an injunction ought not be granted.

9. The respondents also submit that any damages that the Club may incur if the injunction is not granted are capable being quantified and that the Club being compensated by an award of damages. Conversely, they contend that if the injunction sought is granted, it will occasion a lot of hardship to the respondents and promoted teams which have already spent monies in recruitment of new coaches, players, pre-season training and other expenses occasioned by promotion.

Determination

10. The principles for the grant of an injunction were set out way back in 1973 in the case of ***Giella v Cassman Brown & Company [1973] EA 358***. The applicant must demonstrate from the pleadings that he has a *prima facie* case with a probability of success and show that damages will not adequately compensate him. If the court is in doubt on either or both of these points, then it will decide the matter on the balance of convenience. A *prima facie* case is more than an arguable case. The applicant must show an infringement of a right, the enforcement of which the applicant has a probability of succeeding.

11. In order for the plaintiff to succeed it must show that it is entitled to play in the 2018 season of the KPL. The plaintiffs' case was hinged on the fact that the *Club Licensing Guidelines* were declared null and void in ***High Court in Petition No. 59 of 2017***. They contended that as a result of the relegation, the Club lost its sponsors including Muhoroni Sugar Company. They argued that the decision was devoid of sporting merit and not justifiable and that although the Sports Tribunal reinstated the Club, it was too late as substantial damage had been caused to it.

12. I have looked at the decision of the Tribunal. It held that that *Club Licensing Guidelines* were defective in some material respect and that they should be rectified before undertaking the licensing process. The judgment declaring the *Club Licensing Guidelines* null and void was stayed by the Court of Appeal in ***Civil Application No. NAI 223 of 2017 (Nick Mwendwa and Another v Sam Nyamweya)*** meaning that the *Guidelines*, where applicable, remain in force for the time being. Whatever the position of these *Guidelines*, the plaintiffs have not demonstrated that the decision to relegate it was grounded on unreasonable rules or standards bearing in mind that the Club came last in the 2017 season.

13. Further and in reference to Clause 4.1 of the Agreement between FKF and KPL relied on by the plaintiffs, I find that the Club is not a party thereto. The Clause refers to mutual agreement between FKF

and KPL and if there was no mutual agreement, either of the defendants would have opposed this application. It is apparent that both defendants are agreed that the Club was properly relegated. I therefore find and hold that the plaintiffs have not established a *prima facie* case with a probability of success.

14. As to whether damages will be an adequate remedy, the losses incurred by the Club can be quantified in monetary terms. These losses include the loss of contractual obligations and sponsorship. There is no evidence or even allegation that the defendants cannot compensate the Club if the suit ultimately succeeds.

15. Even if I were in doubt as to whether the plaintiffs have established a *prima facie* case, the balance of convenience is against them. The fact that the Club was relegated means that other teams were promoted to the KPL. These teams have prepared to compete yet they have not had an opportunity to present their position in this case. Far be it for this court to make adverse orders without hearing them as this would be a grave breach of the rules of natural justice. The fixtures for the 2018 KPL and National Super League have already been settled and the various teams have arranged their affairs in preparation. An injunction granted at this stage would do substantial damage and inconvenience other clubs and third parties involved in both Leagues.

Disposition

16. For the reasons I have set out, I am constrained to dismiss the notice of motion dated 28th December 2017 with costs.

DATED and **DELIVERED** at **KISUMU** this 22nd day of **January** 2018.

D.S. MAJANJA

JUDGE

Mr Odeny instructed by Bruce Odeny & Company Advocates for the plaintiff.

Mr Ochieng instructed by Sila Munyao and Company Advocates for the defendant.