IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2021/46619

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

20/12/2021 Malindi
DATE SIGNATURE

In the matter between:

PHATELANG WILLIAM SENOAMADI	First Applicant
COLLIN SOFANA SIBEKO	Second Applicant
and	
KNIGHTS GOLF CLUB	First Respondent
JOE ZIMEMA	Second Respondent
PAPPY MOLEFE	Third Respondent
SIPHO MOSAI	Fourth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 20 December 2021.

JUDGMENT

MALINDI J:

Introduction

[1] On 6 October 2021 the applicants obtained an Order to the following effect:

"1. The rules relating to forms, service and time periods as prescribed by the Uniform Rules are dispensed with and this matter is enrolled and heard on an urgent basis.

2. The Respondents are interdicted and restrained from continuing with the suspension of the Applicants and are required to reinstate the participation of the Applicants in all the activities of the Knights Golf Club. The Third Respondent is ordered to reinstate the Applicants on the Knights Official and General WhatsApp communication portals with immediate effect to enable their unhindered participation in all activities of the club.

3. The decision taken on 16 September 2021 by the Second Respondent *inter alia* to suspend the Applicants from all Knights Golf Club activities is declared to be unlawful, and invalid; and is reviewed and set aside.

4. The Knights Golf Club games played at ERPM on Sunday 19 September 2021 and at Riviera Country Club on Sunday 3 October 2021 and any other game that may be played during the period of the unlawful, and invalid suspensions of the Applicants, are declared invalid and not applicable for the purpose of calculating the annual performance scores of the players in the applicable competitions, namely the Order of Merit (OOM), the Memorial Cup and the Captains' Cup."

[2] The essence of these orders is that any decision taken and all acts undertaken by the respondents from 16 September 2021 without the participation of the Applicants were declared unlawful, and invalid. This included the games already played on 19 September 2021 and 3 October 2021, and any other that may be played during the period of their unlawful suspension.

[3] On 16 November 2021 the applicants launched an urgent application seeking, among others, orders that the respondents be held to be in contempt of the Court Order

of 6 October 2021 and that their dismissals/expulsions from the Club on the same day be declared unlawful and invalid.

Background

[4] The second and fourth respondents play official functions within the Club.

[5] The first respondent (*"Senoamadi"*) transmitted the Court Order to the respondents on 6 October 2021 at 17:58 and the fourth respondent (*"Mosai"*) acknowledged receipt thereof on 7 October 2021 at 05:59 and advised Senoamadi that the respondents *"shall be appealing this order"*.

[6] On 24 October 2021 Senoamadi wrote to the respondents' attorneys complaining that the Court Order has not been fully complied with and giving them an ultimatum to comply by 10h00 on 25 October 2021 failing which further urgent proceedings would be launched.

[7] This threat to institute urgent proceedings had been preceded by an earlier urgent application set down for 11 October 2021 after the respondents had undertaken to comply on 9 October 2021 immediately upon receipt of the applicants' notice of withdrawal of the urgent application referred to above.

[8] On 15 November 2021 the applicants were each served with notices that they had been found guilty in disciplinary proceedings held on 8 November 2021 and afforded until 9 November 2021 to submit mitigation on sanction. They were informed that because they had failed to submit mitigation their membership is terminated with immediate effect.

[9] The applicants allege that an undertaking had been made on 11 November 2021 to provide Senoamadi with the record of proceedings of 6 November 2021 (which were held in their absence) for purposes of cross-examining the witnesses before providing mitigation. The respondents deny that the proceedings were in their absence, and further deny that these were informal investigations as alleged by the applicants.

[10] The disciplinary proceedings were preceded by letters of suspension against both applicants dated 16 September 2021, and setting the date for the hearing on 6 October 2021. It was alleged that on 12 September 2021 they had conducted themselves *"in an improper behaviour in that you were involved in a fight against another member of the Club"*. The suspensions from 16 September 2021 meant that they can *"no longer take part in any of the Club's activities"* until their matter have been resolved.

[11] Senoamadi responded to the letter of suspension on 16 September 2021 by, among others, complaining that the suspension would exclude him from participating in four pending competitions including the Memorial, Captain's Cup, the Order of Merit (*"OOM"*) and the Club Champs.

[12] The respondents allege that the applicants and another member were involved in a verbal altercation which escalated into a physical fight. The three continued to exchange verbal attacks on one another on the respondents' communication platforms, hence their suspension.

Analysis

[13] I ordered that the parties address me on both the question of urgency and the merits as I deemed the two to be intertwined. As was stated in *East Rock Trading 7 (Pty) Ltd &*

Another v Eagle Valley Granite (Pty) Ltd & Others[1], depending on the merits of each case the question of urgency may be determined by the merits of the case even if there are deficiencies in pleading urgency. At paragraph [9] the following is stated:

> *"[9] It means that if there is some delay in instituting the proceedings an Applicant has to explain the reasons for the delay and why despite the delay he claims that he cannot be afforded substantial redress at a hearing in due course. I must also mention that the fact the Applicant wants to have the matter resolved urgently does not render the matter urgent. The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at a hearing in due course then the matter qualifies to be enrolled and heard as an urgent application. If however despite the anxiety of an Applicant he can be afforded a substantial redress in an application in due course the application does not qualify to be enrolled and heard as an urgent application."*

[14] The incident of 12 September 2021 is seriously contested. Besides it being disputed by the applicants, they aver that the verbal attacks contained in the respondents' annexure "SM3" pertain to an incident that took place in August 2021. Furthermore, the applicants contend that the Court Order of 16 October 2021 returned them into full membership and therefore that the suspensions effected on 16 September 2021 were declared unlawful and invalid.

[15] I agree with this contention because the expulsions that were carried out on 16 November 2021 arise out of proceedings flowing from the incident of 12 September 2021 if it did happen even on the respondents' version. Everything that was done thereafter, including the contested disciplinary hearing, was declared unlawful on 16 October 2021. This alone, renders the respondents to not have complied with the Court Order of 16 October 2021. Once the decision to suspend the applicants was declared unlawful, reviewed and set aside, the respondents could not rely on it to take any further actions.

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[1] *East Rock Trading 7 (Pty) Ltd & Another v Eagle Valley Granite (Pty) Ltd & Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011); (2012) JOL 28244 (GSJ).

[16] The respondents have submitted that the decision of 16 November 2021 to terminate the applicants' membership is not hit by the Court Order of 6 October 2021 because the Court Order declared only the decision of 16 September 2021 as unlawful and invalid. This submission is untenable since, as I state above, the decision of 16 November 2021 arises of the unlawful conduct of 16 September 2021. There is no reason not to infer a deliberate and *mala fide* stratagem by the respondents to undermine the Court Order of 16 October 2021 by their conduct. The applicants are entitled to an order that the respondents purge the contempt and that the applicants set this matter down on an urgent basis again for the respondents to show cause why they should not be committed to jail for the criminal element of their contempt.[2]

Dispute of fact

[17] An illusion of a dispute of facts arose in regard to whether the respondents have complied with paragraph 4 of the Order in respect of disregarding the scores of the games played, and these played during the period of the unlawful suspension. The effect of that Order is that the scores of all games played from 19 September 2021 to date are declared invalid and *"not applicable for the purpose of calculating the annual performance scores of the players in the applicable competitions"* namely the Order of Merit (OOM), the Memorial Cup and the Captain's Cup.

[18] The order requires the deduction of scores earned by all the players who participated in the three named competitions from 19 September 2021 to date. The dispute whether scores are kept in certain games is not a genuine dispute.[3] The applicants obtained an Order that scores be removed and not be taken into account in all three competitions for the period that the applicants were unlawfully disqualified from

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2 See: Herbstein & Van Winsen: The civil Practice of the High Courts of South Africa (5th Edition), Vol 2 (Cilliers, Loots & Nel (eds)) at 1098; 1100 – 1104; 1109 – 1112.

3 *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA).

playing in them. Whether the respondents are correct in their contentions will be taken into account at the hearing on whether there was wilful and *mala fide* non-compliance.

Urgency

[19] The respondents' conduct overshadows any deficiency that may exist on the applicants' part in prosecuting this matter. The applicants consistently acted in the protection of their rights from the moment they were unlawfully suspended on 16 September 2021. It was the respondents who used strategies to fatigue the applicants out of litigation. They even lured them into withdrawing the contempt application of 8 October 2021 by making undertakings to comply with the Order only to revive the non-existent disciplinary proceedings out of the carcass of the 16 September 2021 unlawful suspensions. Any non-compliance with the rules and directives on the part of the applicants is condoned.

[20] Was it not that the applicants appeared in person, the respondents' conduct would attract a severely punitive costs order. I will nevertheless make a costs order for any costs as would be allowed by the Taxing Master under these circumstances.

Conclusion

[21] I have come to the conclusion that the respondents are in contempt of the Court Order of 6 October 2021. They are ordered to purge that contempt. The applicants may set this matter down for the hearing of committal of the second to fourth respondents to jail on an urgent basis, with the current papers duly supplemented.

[22] I therefore make the following order:

1. The rules relating to forms, service and time periods as prescribed by the Uniform Rules of this Court are dispensed with and the matter is enrolled and heard as an urgent application.

2. The respondents are in contempt of the Court Order granted by Honourable Judge Mahalelo under case number 2021/46619 on 6 October 2021.

3. The decision taken on 16 November 2021 by the second respondent to expel/dismiss the applicants as members of the first respondent (Knights Golf Club) is in violation of the Court Order and is declared unlawful, is invalid and is therefore reviewed and set aside with immediate effect.

4. The respondents are ordered to purge the contempt referred to in paragraph 2 above within ten (10) days of this order.

5. The applicants may set the matter down as a matter of urgency, with the current papers duly supplemented, for the hearing of committal of the second, third and fourth respondent to jail for the crim of contempt.

6. The applicants shall, in compliance with paragraph 5 above, simultaneously make application whether the matter should be referred to oral evidence on the issue whether the respondents wilfully and *mala fide* disobeyed the Court order of 6 October 2021.

7. The respondents are ordered to pay the costs of the application, as would be allowed by the Taxing Master.

G MALINDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

FOR THE APPLICANTS:	In person
INSTRUCTED BY:	In person
COUNSEL FOR RESPONDENTS:	S B Nel
INSTRUCTED BY:	Weavind & Weavind Inc
DATE OF THE HEARING:	26 November 2021
DATE OF JUDGMENT:	20 December 2021