



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case No: 1016/2013
NOT REPORTABLE

In the matter between:

**SOUTH AFRICAN SPORTS CONFEDERATION
AND OLYMPIC COMMITTEE**

Appellant

and

LARAINÉ LANE

Respondent

Neutral citation: *SASCOC v Lane* (1016/13) [2014] ZASCA 189 (27
November 2014)

Coram: Mpati P, Lewis, Maya, Bosielo JJA and Fourie AJA

Heard: 5 November 2014

Delivered: 27 November 2014

Summary: Voluntary resignation – suspension from board membership rendered moot by a subsequent resignation.

ORDER

On appeal from: South Gauteng High Court, Johannesburg (Wright J sitting as the court of first instance)

- 1 The appeal is upheld with costs including the costs of two counsel.
- 2 The order of the court below is set aside and replaced with the following:
'The application is dismissed with costs.'

JUDGMENT

Maya JA (Mpati P, Lewis, Bosielo JJA and Fourie AJA concurring):

[1] These proceedings arise from the controversy surrounding the treatment accorded Ms Mokgadi Caster Semenya, a South African middle distance runner and world champion, at the International Amateur Athletics Federation world championships held in Berlin in October 2009. The appellant (SASCOC) appeals against the decision of the South Gauteng High Court, Johannesburg (Wright J) which set aside its decision of 4 November 2009 to suspend the respondent (Ms Lane), a board member of Athletics South Africa (ASA) at the time. The appeal is with the leave of the court below.

[2] SASCOC and ASA are associations incorporated under s 21 of the old Companies Act 61 of 1973. SASCOC's key object is 'to promote and develop

high performance sport and recreation in the Republic of South Africa and, to that end, act as the controlling body for the preparation and delivery of Team South Africa at all multi-sport international games including but not limited to the Olympics, Paralympics, Commonwealth Games, World Games and All Africa Games'.¹ Its membership comprises various national sports federations which include ASA. Its powers, which it exercises through its board of directors, are inter alia:

'9.3.1 to oversee, direct, control, administer and if necessary manage the activities of SASCOC, which shall include and shall not be restricted to:

9.3.1.1 the activities of SASCOC's members;

...

9.3.1.3 inquiring into the administrative and/or financial affairs of Members, and, where necessary, to recommend corrective measures in this regard, and if these measures are not implemented to take over the administrative and/or financial affairs of the Member until these are placed on a satisfactory footing;

...

9.3.1.5 suspend, fine and terminate the membership of any individual affiliated through their respective National Sports Federation to SASCOC or to suspend or fine any National Sports Federation or Member who infringes the Constitution, directives or resolutions of SASCOC, or engages in any act of misconduct, improper practices, misdemeanour, acts of defiance, or brings SASCOC into disrepute.'²

[3] For over three decades, Ms Lane has been involved in various disciplines within the country's sporting industry as a competitive athlete, coach, manager, selector, advisor and mentor to athletes and a member of various committees and commissions. By virtue of her position as a board member of ASA, Ms Lane was also an *ex officio* member of SASCOC in terms of clause 6.5 of SASCOC's Articles of Association.³

¹This objective (and SASCOC's ancillary objectives) is contained in its Memorandum of Association signed on 19 July 2008.

²These are set out in SASCOC's Articles of Association which, together with its Memorandum of Association and Regulations, form SASCOC's Constitution.

³The clause provides that '[t]he members of the [ASA] Board shall also be members of SASCOC in an *ex officio* capacity and shall be entitled to attend, speak and vote at any Board Meeting or General Meeting of

[4] On 5 November 2009, the SASCOC board, acting in terms of clause 9.3.1.5 of its Articles of Association, suspended the entire board of ASA. The members' suspension would operate with immediate effect pending the outcome of a disciplinary enquiry on a charge of bringing ASA, SASCOC and the South African sport into disrepute. This resulted from the manner in which the board handled Ms Semenya's gender testing and her consequent humiliation. A SASCOC board member, Mr Ray Mali, was designated as ASA's administrator and tasked to assume control of its office with immediate effect.

[5] SASCOC effected the suspension, about which the ASA board had been forewarned in September 2009, on the recommendation of the Legal and Arbitration Commission (the commission) led by Mr Michael Collins, an advocate. SASCOC had prompted an investigation into the events in terms of s 13(4)(a) of the National Sport and Recreation Act 110 of 1998 which allows 'an investigation to be undertaken to ascertain the truth within a sport or recreation body, where allegations of any malpractice of any kind in the administration have been made'. The commission's main terms of reference were 'to ascertain the truth about events leading to the participation and testing of [Ms Semenya] and subsequent conduct of the officials of ASA ... and make recommendations to SASCO on how the matter should be handled going forward, which could include one of the various options available to SASCOC in terms of legislation, the SASCOC Articles of Association or the ASA Constitution.'

[6] Ms Lane participated in the investigation and was one of the board members who submitted reports and were interviewed. On 2 November 2009, the commission issued its report which found contradictions in her evidence and

that she had been aware that proper procedures were not being followed. The report further found as follows:

‘Mr Leonard Chuene, [ASA’s president], through his actions, disregarded the interests of Ms Semenya and has allowed the whims of third parties to supersede Ms Semenya’s interests. In doing so he has had a guiding hand in the violation of Ms Semenya’s rights. He ignored the advice of a team doctor who has had a long and successful history with ASA ... Regrettably, Mr Chuene chose to turn Ms Semenya’s confidential medical issues into a political case. That constitutes irrational, selfish, irresponsible and reprehensible conduct. He has publicly and repeatedly lied and in the view of this committee, he is guilty of gross misconduct as well as bringing ASA, the sport of athletics and SASCOC into disrepute.

The board of ASA approved of Mr Chuene’s conduct notwithstanding the evidence available in the public domain at the time clearly pointing towards dishonesty on his part. The board members, having associated themselves with his conduct, are in the same position as Mr Chuene and should share the responsibility for his conduct. It is indeed surprising that the board of ASA failed to take any corrective measures to rectify the wrongs committed by its office bearers and officials or even properly investigating the matter. The vote of confidence in Mr Chuene by the board is, in itself and in the circumstances, an act which has brought ASA, the sport of athletics and SASCOC into disrepute.’

[7] On 15 November 2009 and before the disciplinary proceedings started, Ms Lane resigned from the ASA board by way of a letter sent to ASA’s General Manager, Mr Molatelo Malehopo, one of the suspended individuals. Her reasons were that her professional standing as a psychology practitioner had been compromised by the incident, that she had no wish to fight ‘against friends and colleagues within the sport’ or be entangled in an extended legal battle that would impoverish ASA and prolong the ‘sad situation’.

[8] On 20 January 2010 she received a letter from SASCOC's president, Mr Gideon Sam. It informed her that Mr Collins had been appointed to conduct the contemplated disciplinary proceedings, which had already started, on behalf of SASCOC and ASA's interim board and that she would be contacted shortly regarding the investigations. It was anticipated that the proceedings, which she welcomed in her written response as an opportunity to clear her name notwithstanding her resignation, would be finalised during the first quarter of 2010. She waited in vain. Between late January and November 2010, she exchanged email correspondence with Mr James Evans, the chairperson of ASA's interim board who was eventually appointed President of the ASA board. She complained about SASCOC's delay in convening the disciplinary hearing.

[9] In November 2010, SASCOC invited all the suspended board members who had resigned to subject themselves to a disciplinary hearing should they wish to serve in athletics or any code affiliated thereto as a member of SASCOC. Ms Lane did not respond to this invitation. She also declined an invitation to participate in a forensic audit and investigation into alleged irregularities at ASA commissioned by SASCOC. This exercise was conducted by Deloitte and cleared some of her suspended colleagues of wrongdoing which led to the withdrawal of charges against them and the lifting of their suspensions. Instead, she approached various offices – President Zuma's Hotline which referred her to the Minister of Sport and Recreation, the Human Rights Commission and the Public Protector – to intervene in the matter. Between July 2010 and September 2012 she was engaged in continuing communications with these offices which, in turn, communicated with SASCOC on her behalf. But the interventions ultimately came to naught. The Minister of Sport eventually conceded he had no jurisdiction over SASCOC and the Public Protector's office merely informed Ms Lane that SASCOC indicated to it that it would subject

board members who had resigned to disciplinary proceedings only if they wished to stand for office in sporting bodies.

[10] In June 2012, she saw a press statement which reported that ‘Chuene and other [ASA] board members were banned from involvement in any sport under the jurisdiction of [SASCOC] and the Olympic Committee, for up to 7 years, following investigations of fraud and corruption, and their involvement in the Caster Semenya gender debacle’. This prompted her to write to Mr Sam on 16 July 2012, demanding to be subjected to a disciplinary hearing so that she could clear her name. The letter went unanswered. She wrote to SASCOC again in August asking for a hearing and also posted the letter on the website of SASCOC’s Chief Executive Officer, Mr Tubby Reddy. These too elicited no response from SASCOC.

[11] Finally, in November 2012, her attorneys wrote to SASCOC demanding confirmation that her suspension was withdrawn and a written apology. SASCOC replied that the matter was, at Ms Lane’s instance, being attended to by the Public Protector and the Human Rights Commission with which it had co-operated. Ms Lane’s subsequent request for the matter to be referred to arbitration was firmly rejected by SASCOC on the basis that she had no standing and that there was no arbitrable dispute.

[12] That response triggered her high court application. She sought an order setting aside her suspension, various interdicts and declaratory relief against SASCOC to enable her to participate in sporting and athletic activities in any capacity and hold office in sporting and athletic bodies falling under SASCOC’s

auspices or otherwise. Her case was premised on the grounds that SASCOC did not properly apply its mind to the matter, acted unreasonably in suspending her without advancing substantive charges and failed to comply with the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). The nub of her complaint was that the result of SASCOC's failure to subject her to a disciplinary process condemned her to a lifelong stigma of the suspension and ban from standing for office or participating in any sporting activities as an administrator, sports psychology practitioner or otherwise without being afforded a hearing.

[13] The court below found in Ms Lane's favour. Her resignation was declared invalid and of no force and effect on the basis that it was not established that it came to SASCOC's knowledge. The court below rejected SASCOC's defence that it acts contractually and does not exercise public power when it executes its functions and that it derived its authority to suspend from its Articles of Association and Constitution which preclude the application of PAJA. In the court's view, SASCOC's decision to suspend constituted administrative action reviewable under PAJA and had to be set aside for want of notice and a fair hearing to Ms Lane. The court below then reviewed and set the suspension aside and declared that she is entitled to participate in any sporting and athletic activities in any capacity, stand for and hold office in any sport code under the jurisdiction of SASCOC or otherwise.

[14] The central issue on appeal was whether Ms Lane resigned as a board member of ASA after her suspension. Other secondary issues were whether the suspension was a matter to be determined by the contractual relationship between Ms Lane and SASCOC – ie the rules of natural justice determined

from the parties' agreement⁴ – as the latter contended, or if the decision constituted an administrative action reviewable under PAJA as Ms Lane contended and, if it was, whether she complied with the relevant statutory provisions particularly in regard to instituting legal proceedings within a reasonable period.

[15] SASCOC contended that she did resign and thus rendered her suspension moot. It further contended that she sought the wrong relief as she should have applied for an order quashing the resignation and reviewing its purported failure to take disciplinary action against her which was her real concern. Ms Lane, on the other hand, supported the reasoning and decision of the court below. She disputed that her resignation was valid. This was on the basis that her resignation letter was addressed to her co-members on the board who were also on suspension at the time and so had no authority to represent ASA. She also argued that whether or not she did resign was, in any event, immaterial in so far as the declaratory relief was concerned. This was so, she contended, because of SASCOC's stance that even those members who resigned would be barred from any involvement in sports under the auspices of SASCOC.

[16] The first question for determination concerns the status of Ms Lane's resignation letter. That she had indeed resigned was not placed in issue in her affidavits. She described herself as a former member of the ASA board. She also stated in her founding affidavit that she 'welcomed an investigation and enquiry, *despite [her] resignation from ASA*, as [she] wanted to dispel any allegations of wrongful conduct on [her] part'. (My emphasis.) She did allege to have resigned 'under duress' because of a 'barrage of threatening e-mails from [Evans]'.

⁴*Jockey Club of South Africa v Transvaal Racing Club* 1959 (1) SA 441 (A); *Turner v Jockey Club of South Africa* 1974 (3) SA 633 (A).

Surprisingly though, all the emails exchanged between her and Mr Evans spanning a year, which she attached to her founding affidavit, showed nothing but that the latter, who repeatedly expressed an expectation that the disciplinary hearing would be conducted soon, actually commiserated with her plight and that they enjoyed a good relationship. None of the threatening mail that she said she had received was placed before the court below even after her allegation was pertinently denied in SASCOC's answering affidavit. Significantly, despite its ultimate finding that her resignation 'was in vain', the court below did not accept her allegations of duress, correctly so in my view.

[17] For its interpretation of the resignation letter, the court below relied only on Mr Sam's subsequent letter of 20 January 2010 informing her about an impending disciplinary hearing to cast doubt on whether SASCOC became aware of her resignation and justify its finding that her resignation 'was in vain'. This approach clearly ignored Ms Lane's pleaded case and the evidence as it was not disputed in the affidavits that the letter came to SASCOC's attention. In an email dated 19 August 2012 which she sent to Mr Sam's assistant, Ms Sonia Grobler, for distribution to all SASCOC directors and members, she stated that 'Gideon Sam and James Evans were notified of my resignation. It was also reported in the media'. The court below appears to have also relied, erroneously, upon a refrain in Ms Lane's affidavits actually contradicted by the commission's findings, that Mr Collins assured her that she had done nothing wrong. However, nothing really turns on this misdirection.

[18] It is trite that resignation is a unilateral, final and binding act which may be express or tacit.⁵ An express resignation such as the one here must merely be

⁵*Rustenburg Town Council v Minister of Labour and others* 1942 TPD 220; *Potgietersrust Hospital v Simons* 1943 TPD 269 at 220; *Stewart Wrightson (Pty) Ltd v Thorpe* 1977 (2) SA 943 (A) 954A-B; *African National*

communicated. It need not be accepted by the employer or, in this case, ASA and SASCOC. Ms Lane needed no consent from these bodies for the resignation to come into effect. Therefore, that they did not respond to her resignation letter is entirely irrelevant and does not detract from its effect. All the authorities relied upon by Ms Lane in this regard cannot assist her case as they are distinguished by their own facts. This too was not considered by the court below.

[19] As rightly pointed out by SASCOC, it is not insignificant that in four years Ms Lane made no attempt to have the resignation declared invalid to pave the way for the review of the decision to suspend her, seek reinstatement or compel SASCOC to hold a disciplinary enquiry against her. All indications are that she intended to resign and no longer regarded herself as a member when she launched the review proceedings. Her resignation necessarily superseded her suspension and deprived her of any right to challenge the suspension as its validity was no longer a triable issue.⁶ SASCOC was equally divested of any jurisdiction to subject her to disciplinary action when she was no longer its member, as was pointed out to her even before she approached the court below.

[20] It is obvious from the record that nothing precluded her from engaging in sporting activities or seeking office, at which stage she would be subjected to a disciplinary hearing. The perceived 'lifelong ban' she fears, which is based on no more than a media statement that did not mention her name, is unfounded. She was therefore not entitled to the relief granted by the court below in respect of the suspension. Nor was it necessary to seek the declaratory relief. This finding is in my view dispositive of the matter. It also dispenses with the need to

Congress v The Municipal Manager, George Local Municipality (202) 31ILJ 69 (SCA) para 11.

⁶*Wessels v Sinodale Kerkkantoor Kommissie van die NG Kerk*, OVS 1978 (3) SA 716 (A) at 723H, 725H.

determine the nature of SASCOC's decision to suspend Ms Lane and whether she was afforded a fair hearing in respect of which it is, in any event, doubtful that she would succeed. The appeal must succeed and no reason has been shown why the costs order should not follow the result.

[21] The following order is accordingly made:

1 The appeal is upheld with costs including the costs of two counsel.

2 The order of the court below is set aside and replaced with the following:

'The application is dismissed with costs.'

MML MAYA
JUDGE OF APPEAL

APPEARANCES:

For the Appellant: PG Cilliers SC (M Feinstein, A Saldulker)

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