

ZIMBABWE FOOTBALL ASSOCIATION
vs
VINCENT PAMIRE
and
CHARLES WESTERFALL
and
SUSAN CHIBIZHE
and
RAFIQ KHAN
and
FRANCIS ZIMUNYA
and
CHAIRMAN, SPORTS & RECREATION COUNCIL
and
MINISTER OF EDUCATION, SPORT AND CULTURE

HIGH COURT OF ZIMBABWE
SMITH J,
HARARE 3 January, 2003

Mr *Manase* for the applicant
Mr *Garabga* for the 1st, 2nd, 3rd, 4th & 5th respondents
Ms *Charauya* for the 6th & 7th respondents

SMITH J: The applicant (hereinafter referred to as "ZIFA") has filed this application seeking an order which -

- (a) interdicts the ZIFA Council from meeting on 4 January, 2003 to deal with the vote of no confidence taken by the ZIFA Board on 12 December, 2003;
- (b) declares Leo Mugabe (hereinafter referred to as "Mugabe") and James Mutisi (hereinafter referred to as "Mutisi") to be Chairman of ZIFA and ZIFA Board Member, Finance, respectively;
- (c) declares the vote of no confidence passed on 12 December, 2002 by the ZIFA Board to be null and void;
- (d) orders the third respondent not to sit on the ZIFA Board;
- (e) orders the sixth and seventh respondents to implement the provisions of s 3(1) of the Sports and Recreation Commission Act [Chapter 25:15] (hereinafter referred to as "Chapter 25:15") insofar as the third respondent is concerned.

Mugabe is the Chairman of ZIFA. As such, he deposed to the founding affidavit. The first, second, third, fourth and fifth respondents (hereinafter referred to as "Pamire", Westerfall", "Chibizhe", "Khan" and "Zimunya", respectively) are all members of the ZIFA Board. Pamire is the Vice-Chairman of the ZIFA Board, Westerfall is an elected member, Chibizhe is an elected member and is also a member of the Sports and Recreation Commission, Khan is an *ex officio* member, being Chairman of the Premier Soccer League, and Zimunya is also an *ex officio* member, being Chairman of the Northern Region Soccer League. On 12 December there was a ZIFA Board meeting which was attended by the first five respondents. They passed a vote of no confidence in Mugabe and Mutisi. Mugabe did not attend the meeting because he was at that time in Nigeria on official ZIFA business. Neither he nor Mutisi were aware that the motion of no confidence was an item on the agenda. In a letter dated 13 December 2002 the ZIFA Chief Executive Officer advised Mugabe that the ZIFA Board, at its regular monthly meeting on 12 December, had passed a vote of no confidence in him and Mutisi. The reasons therefor were -

- 1) Recent findings about the way the Goal Project has been conducted and the fact that the Chairman and the Board Member Finance withheld information about the project from the Board members;
- 2) Arbitrary appointments to several key positions;
- 3) The appointment of an outsider to run the Footballer of the Year awards without consulting the Board.

Mugabe submitted that the *audi alteram partem* rule was breached in that he and Mutisi were not given an opportunity to be heard before the vote of no confidence was passed. The meeting at which the vote of no confidence was passed was

irregular, firstly because a special or extra-ordinary Board meeting could only be covered if requested by not less than two-thirds of the voting members, and secondly because the vote of no confidence can only be passed by the elected Board members and he and Mutisi, who are elected members, were not present. Mugabe further submitted that Chibizhe is precluded from being a ZIFA Board member by virtue of the provisions of s 3(1) of Chapter 25:15. He then cast aspersions at Pamire and Chibizhe and went on to deal with the reasons set out in the letter from the ZIFA Chief Executive Officer to Mugabe for the vote of no confidence. Mugabe claims that the matter is urgent because it is necessary to stop the ZIFA Council meeting which has been convened for 4 January to discuss what he calls the "irregular findings" of the meeting of 12 December,

The respondents oppose the application. Pamire, in his opposing affidavit, made the following submissions. The ZIFA Council is the most appropriate and ideal forum for Mugabe and Mutisi to be heard. This matter should not be taken to the Courts. There is no urgency in the matter and the application is an abuse of the court procedures. Mugabe is Chairman of ZIFA and is authorized to represent ZIFA in legal matters. However, he has abused his authority by bringing this application in the name of ZIFA instead of in his personal capacity. As regards the allegations made by Mugabe in his founding affidavit, Pamire responded as follows. Chibizhe, on her appointment to the Sports and Recreation Commission Board, remained an elected member of the ZIFA Board because the ZIFA Board had so resolved at a meeting on 15 November, 2002. The ZIFA Board meeting on 12 December was an ordinary monthly meeting of the Board. The issue of the vote of no confidence was not on the agenda but had been raised at the meeting because of adverse reports in the Press on the management of the affairs of ZIFA, with particular emphasis on financial matters.

The *audi alteram partem* rule was not breached as Mugabe and Mutisi would be given a hearing at the ZIFA Council meeting. Mugabe and Mutisi are office-bearers of ZIFA, as are the first five respondent. Pamire denied the allegations of misconduct levelled against him by Mugabe and said that they are false. He went on to say that this application was not instituted by ZIFA. According to its Constitution, ZIFA cannot bring an issue of this nature before the Courts. It must exhaust its internal *fora* for arbitration and, after exhausting them, refer the matter to CAF and thereafter to FIFA.

Chibizhe, in her opposing affidavit, said that she had been appointed to the Board of the Sports and Recreation Commission (hereinafter referred to as "the SRC") from July 2002. The issue of her membership had been debated at the ZIFA Board meeting on 15 November, where it was agreed that she could continue as a ZIFA member. That resolution was made taking into account that other members of the SRC Board are office-bearers at national association level with other sporting disciplines such as athletics and basketball. She said that the allegations of misconduct levelled against her by Mugabe are false.

Mr *Manase* submitted that the matter was one of urgency, since there was insufficient time after Mugabe's return from Nigeria for him to prepare for the ZIFA Council meeting on 4 January. Furthermore, members of the ZIFA Council would be lobbied by Board members to support the votes of no confidence. He argued that the Board meeting on 12 December had not been validly convened because the agenda had been changed at the beginning of the meeting. Furthermore, Chibizhe should not have participated as she was ineligible to be a ZIFA Board member as she was also a member of the SRC Board. The allegations against Mugabe on which the vote of no confidence was based were groundless. Mugabe's rights were being trampled on and it

was only the Court that could protect him. Mr *Garabga* argued that the application was frivolous and vexatious. The matters raised by Mugabe were personal and not national. Mugabe is the real applicant, not ZIFA. The ZIFA Constitution, as in the case with CAF and FIFA, discourages recourse to the courts, preferring arbitration. Mugabe's right to a hearing had not been violated. He would have an opportunity to present his case at the ZIFA Council meeting. Mugabe's position as Chairman has not changed.

Ms *Charauya* submitted that the 6th respondent should not have been cited as a party. In terms of s 3 of Chapter 25:15 the SRC is a body corporate, capable of suing and being sued. It is that body, if anything, that should have been cited and not the Chairman of the SRC. As the Director-General of the SRC is the Chief Executive Officer, he is really the party that should have been cited. As the Minister is not involved in the administration of the Act, he, too, should not have been cited. She also pointed out that the order sought by the applicant is for the sixth and seventh respondents to implement the provisions of s 3(1) of Chapter 25:15. The reference should be to s 3(1) of the Sports and Recreation Commission (General) Regulations, 1995 (S I 342/95) (hereinafter referred to as "the Regulations").

In a dispute such as this, which relates to the internal procedures and workings of a private organization such as ZIFA, it is not for the courts to investigate and decide on the merits or demerits of the actions of one party as against those of the other. Thus, it is not for the Court to decide whether or not the vote of no confidence in Mugabe or Mutisi was justified and whether or not Pamire and Chibizhe were acting in the way they did so as to preempt Mugabe and get him kicked out of office before he could investigate their conduct. The only concern of the Court is whether or not one or other of the parties has acted in a manner which was not in accordance with

the law or the ZIFA Constitution. Therefore I do not consider it necessary or appropriate for the Court to inquire into the merits or otherwise of the votes of no confidence.

As regards the legality of the ZIFA Board meeting on 12 December, it was convened as the regular monthly meeting of the Board. One of the first things that was done at the meeting was to change the agenda. I do not consider that that was an illegality. Clearly, any board of management is able to deal with whatever matters it considers to require attention. In fact, a board of management would be failing in its duties if it refused or failed to deal with a matter which urgently required attention merely because that matter was not on the agenda. Accordingly I find that the meeting on 12 December was properly convened.

Article 10:11 of the ZIFA Constitution provides as follows -

"a) - A vote of 'no confidence' can be passed on any member of the elected ZIFA Board by the elected committee members for unbecoming behaviour or for serious dereliction of duty subject to ratification by Council within thirty days.

b) - The elected ZIFA Board may also have a vote of no confidence passed on it by a two thirds majority of the total voting strength of Council and for the purposes of such a vote, the members of the ZIFA Board shall not take part in the voting."

At the Board meeting on 12 December, of the five elected members, three were present, namely Pamire, Westerfall and Chibizhe. Mugabe alleged that Chibizhe "through lack of proper advice and downright arrogance, continues to sit as a member of ZIFA in contravention of the Sports and Recreation Commission Act [Chapter 25:15], and should not be accepted as a ZIFA Board member". It is ironical that Mugabe should take this attitude when, at the ZIFA Board meeting on 15 November, 2002, the position of Chibizhe was fully discussed and it was agreed that she should recuse herself when the Board was discussing matters involving the SRC. Mugabe

submits that Chibizhe is disqualified to be a ZIFA Board member, since she is also a member of the SRC Board, and therefore there were insufficient elected Board members to vote on the "no confidence" proposal. Section 3 of the Regulations provides as follows -

"3.(1) Board members shall have national responsibilities and shall therefore not hold office at any club or national association levels.

(2) On the assumption of duty, a Sports Commission Board Member or a member of the Sports Commission Directorate shall resign from any such office."

In my opinion, the above-mentioned provision does not disqualify Chibizhe from being a member of the ZIFA Board. There is nothing in the ZIFA Constitution which prohibits a Board member from being a member of the SRC. The Regulations were made by the seventh respondent (hereinafter referred to as "the Minister"), presumably because he felt that it was undesirable that a SRC Board member should also hold office at a club or national association level. He is the one who should have insisted that either Chibizhe resign from the ZIFA Board or else she would be removed from the SRC Board in terms of s 9(1)(a) of Chapter 25:15. That provision permits the Minister to require a member of the SRC Board to vacate his or her office if he or she is guilty of any conduct which renders him or her unsuitable as a member. Failure to comply with a mandatory requirement of the Regulations, which are made by the Minister, is surely conduct which renders a person unsuitable to be a member of the SRC Board. As Mr *Manase* argued, the rule of law must be observed in this country. There is nothing in the Regulations which enables the Minister to grant any member of the SRC Board an exemption from compliance with s 3 thereof. If the Minister considers that s 3 of the Regulations is unworkable or undesirable, he should amend the section. He has the power to do so. He should not just ignore the

provisions of the Regulations or treat them as *pro non scripto*. They are the law and must be observed until such time as they are repealed. That is what is known as the rule of law. One cannot observe only those laws with which one agrees and ignore the others. It is incredible that Chibizhe and, according to her, at least two other members of the SRC Board are sitting as members of that Board in flagrant violation of the provisions of s 3 of the Regulations. The Director-General of the SRC, and presumably the Chairman thereof and other members of the SRC, know what the position is and yet they carry on as though all is in order. If they have so little regard for the laws which fall within their own portfolio, what respect can they have for other laws? If the SRC feels that it can ignore s 3 of the Regulations because it disagrees with it, what other provisions of the regulations or even of Chapter 25:15 are being ignored?

As regards the submission that the *audi alteram partem* rule was not observed, I agree with Mr Garabga that both Mugabe and Mutisi will have a full opportunity at the ZIFA Council meeting which has been convened on 4 January, 2003 to give their side of the story. In my opinion that will be the appropriate forum for the issues to be discussed and resolved. As I have said earlier, those issues cannot be determined in this Court. It is the ZIFA Board and the ZIFA Council which have the mandate and responsibility for administering the soccer world in this country. It is not for the Courts to do so. In terms of the ZIFA Constitution, once the Board has passed a vote of no confidence, that vote is subject to ratification by the Council within 30 days. The issues that are dealt with in this application are of national concern and have been debated in the Press and on the radio and television channels. It is obviously in the best interests of all concerned that the matters be fully debated in the Council and a final decision reached. The Council may ratify the vote passed by the Board or may

refuse to do so. It may also pass a vote of no confidence in all the elected Board members. That, however, is a matter for the Council. Until the Council ratifies the vote of no confidence passed by the Board, Mugabe remains as Chairman and Mutisi remains as Board Member, Finance.

The applicant seeks an order interdicting the ZIFA Council from dealing with the Board's votes of no confidence at its meeting on 4 January. In my view, the Court not only should not, but cannot, prevent the ZIFA Council from considering and dealing with the votes of no confidence. I have given reasons why I consider that the votes were properly passed. It is in the interests of football in this country that the issues are settled as soon as possible. Furthermore, I consider that the Court cannot order Chibizhe not to sit on the ZIFA Board. She has not contravened any provision of the ZIFA Constitution. It is the Minister who must deal with Chibizhe and her membership of the SRC Board because it is the Regulations that she has flouted. The Minister is expected to enforce the Regulations which he has made, but ZIFA has no *locus standi* to seek an order requiring him to observe the rule of law.

For the reasons set out above, it is clear that the application must be dismissed with costs. Who should pay the costs? I consider that it would be unfair to require ZIFA to pay the costs. I consider that they should be paid by Mugabe and Mutisi. Article 12: 1 a) of the ZIFA Constitution provides that the Chairman shall represent the Association as its chief spokesman as well as representing it in court cases. In this case, however, I consider that Mugabe is acting in his personal capacity and not as representing ZIFA. How can ZIFA come to court and seek an order that the ZIFA Council, which is an integral part of ZIFA, shall not convene a meeting and discuss a matter of great importance and urgency? How can ZIFA come to court and ask the Court to set aside a decision of the ZIFA Board. The Board is also an integral part of

ZIFA - it has greater powers than the Chairman has, although the Chairman presides at meetings of the Council and the Board, and has a casting vote when voting is equal, he has to abide by the decision of the majority. If the Board decides that a matter should or should not be contested in Court, the Chairman has to go along with that decision even if he disagrees with it. In this application it is the personal interests of Mugabe and Mutisi that are at stake, not those of ZIFA. It is the first five respondents, rather than Mugabe and Mutisi, who are representing the interests of ZIFA.

Accordingly I consider that the costs of this action must be borne by Mugabe and Mutisi. In view of the fact that they have attempted to bring this application under the guise of ZIFA and pretend that they are trying to protect the interests of ZIFA, I consider that they should pay costs on the higher scale.

It is ordered that the application is dismissed. The costs of the respondents shall be paid by Leo Mugabe and James Mutisi on the legal practitioner and client scale, the one paying the other to be absolved.

Manase and Manase legal practitioners for applicant
Chingore and Garabga legal practitioners for 1st, 2nd, 3rd 4th and 5th respondents
Gill, Godlonton & Gerrans, legal practitioners for 6th and 7th respondents.