



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 202/2013

In the matter between:

1.1.1.1. PETRA THORNBURN N.O.
1.1.1.2.
1.1.1.3. In her capacity as the
1.1.1.4.
1.1.1.5. OWNER CHAIRPERSON OF CRETE GYMNASTIC CLUB
APPLICANT

and

NAMIBIA SPORTS COMMISSION 1st RESPONDENT
NAMIBIA GYMNASTICS FEDERATION (NGF) 2ND RESPONDENT

Neutral Citation: Thornborn N.O. v Namibia Sports Commission (A 202/2013)
[2013] NAHCMD 264 (25 September 2013)

Coram: SMUTS, J
Heard: 17 September 2013
Delivered: 25 September 2013

Flynote: Application for mandamus against the first respondent and for an

interdict against the second respondent, a national sports body. Both forms of relief were premised upon the second respondent's deregistration as a national sports body. An appeal against deregistration eventually succeeded on the day before the hearing. The applicant accepted it was no longer entitled to the relief but sought the costs of the application. Although the application was not entitled to the full extent of the relief sought against the first, it was entitled to compel it to take action and would thus have been substantially successful. They also established its entitlement to an interdict against the second respondent upholding of deregistration.

ORDER

- 1) The first respondent is directed to pay the applicant's costs in respect of the relief sought against it in prayer 2 of the notice of motion;
- 2) The second respondent is directed to pay the applicant's costs in respect of the application for the relief sought against it.

JUDGMENT

SMUTS, J

(b) At issue in this application is whether the applicant was entitled to a mandamus against the Namibia Sports Commission, (the Commission) cited as the first respondent, and whether it had made out a case for an interdict against the Namibia Gymnastics Federation (NGF), cited as the second respondent.

(c) The applicant, a gymnastic club, approached this court on an urgent basis on 2 July 2013. In addition to seeking condonation for bringing the application as one of urgency, the applicant sought the following further relief against the respondents:

- '2. Ordering the first respondent to immediately but before 30 July 2013 take all such steps to carry out its functions in terms of the Namibian

Sports Act, Act 12 of 2003 aimed at putting into effect its own decision that the second respondent should not carry out any activities pertaining to the administration supervision and organization of gymnastic sports whilst it remain deregistered particularly, conducting of trials, section of National teams and participating in International competitions.

3. Ordering the first respondent to take all such steps to finalize all pending disciplinary issues between the applicant and the second respondent and all disputes between it and the second respondent alternatively to immediately appoint an interim Committee to carry out the functions that were carried out by the second respondent before its deregistration.
4. Interdicting and restraining the second respondent from carrying out any gymnastic activities it may have been entitled to on account of its registration then as an umbrella body or such other activities it has been directed not to carry out by the first respondent until such time its deregistration has been set aside by a competent body.'

(d) When the matter was initially called on 2 July 2013, it was postponed by agreement to 7 August 2013 and again to 14 August 2013 to enable the parties to endeavour to reach an amicable resolution of the matter. When that did not occur by 14 August 2013, it was postponed for hearing to 17 September 2013.

(e)

(f) Much of the factual matter relevant to this application is not in dispute. The applicant is the owner of the gymnastic club. The applicant was until 16 August 2011 a member of the NGF, second respondent. But it was then suspended without a disciplinary hearing (on 16 August 2011). After an exchange of correspondence a disciplinary hearing was appointed and its chairperson, Mr N Tjombe, ruled that the applicant's suspension be uplifted.

(g) The applicant had in the meantime raised a complaint against the NGF and in November 2011 the Commission deregistered the NGF as a national sports body in terms of s28(2)(c) of the Namibia Sports Act, 12 of 2003, (the Act) the Commission's empowering legislation. The Commission made it clear that the NGF was to stop all its activities of conducting trials and selection of national

teams and future international participation representing the Republic of Namibia until the dispute with the applicant had been resolved.

(h)

(i) Despite this statement by the Commission, the applicant complained that the NGF continued its activities as a national sports body during October, November, December 2012 and January 2013. The applicant complained to the Commission about the NGF continuing its activities as a national or sports umbrella body.

(j)

(k) The applicant then approached the Commission to take steps against the NGF as it was, in its view, carrying on as if it were not deregistered. The applicant complained that its gymnasts, as a consequence of being excluded by the NGF, had lost out in respect of two competitions held in South Africa and in respect of competitions referred to as Top 6 and Zone 6 games held internationally, as well as not being invited to other competitions. The applicant contended that these activities on the part of the NGF were illegal and that it was incumbent upon the Commission to restrain the NGF from running the sports code as if it had not been deregistered. The applicant contended that despite undertakings given by the Chairperson of the Commission to address these issues, it had not done so. The applicant then approached this court for the relief set out in the notice of motion.

(l) In the Commission's answering affidavit, the Chairperson contended that this application was not properly brought as one of urgency and that the urgency was self created. The NGF also took a similar point as well as other preliminary points. As a result of the postponements, both respondents had a full opportunity to file their answering affidavits and did so. Neither has sought more time to file papers. Although both raised the point of urgency, neither pressed this point with any vigour at the hearing and correctly so, given the lack of prejudice sustained by them. As Mr Titus, appearing for the NGF, rightly acknowledged, in determining the question of urgency, this court would assume that the applicant's case is a good one.¹ The applicant complained of illegal

¹*Twentieth Century Fox Film Corporation v Antony Black Films (Pty) Ltd* 1982 (3) SA 582 (w)

conduct on the part of the NGF which it says, the Commission is not addressing. This entails an ongoing series of competitions and events from which its members are excluded. It is clear that, the applicant would not receive redress if the application was brought in the normal course. Whilst both respondents may with some justification complain about the short notice with which the application was originally brought, the matter became postponed and neither has complained of any prejudice in being able to place the matter before court and in preparing for the application.

(m) In the exercise of my discretion, and particularly given the lack of prejudice on the part of the respondents in putting their respective cases before me, I am prepared to grant the applicant condonation for bringing the application as one of urgency.

(n) The Chairperson of the Commission further pointed out in opposition to this application that the NGF had appealed its deregistration. An appeal committee comprising three persons was eventually appointed in December 2012. The appeal committee was to determine the appeal during the period 10-19 July 2013. The Commission stated that it was thus *functus officio* after making its decision to deregister the NGF and that it would await the outcome of the appeal. The Commission further pointed out that there was nothing to prevent the applicant from interdicting the NGF from engaging in its activities whilst being deregistered – as was sought in paragraph 4 of the notice of motion – but stated that it was not required under the Act to itself take steps and that the application should be dismissed for this reason.

(o)

(p) It was also argued on behalf of the Commission, by Mr Ncube who appeared for it, that the applicant was required to exhaust its internal remedies prior to approaching the court and that it should await the outcome of the appeal. Whilst it is clear that in appropriate cases this court would require a party to exhaust internal remedies in the context of addressing administrative

frequently followed by this court. See *Bergmann v Commercial Bank of Namibia and Another* 2001 NR 48 (HC), *Old Mutual Life Assurance Co. v Old Mutual Namibia Staff Pension Fund and Another* 2006 (1) NR 211 (HC).

action taken against them, this principle would not find application in this case. This is because the appeal is not the applicant's remedy but that of the NGF. There is thus no requirement for the applicant to await the outcome of the appeal. On the contrary, the appeal did not suspend the operation of the decision of the Commission to deregister the NGF. If the NGF had sought to stay the deregistration pending its appeal, it was incumbent upon the NGF to seek interim relief of that nature. But it did not do so. It was thus not incumbent upon the applicant to await the outcome of the appeal in the circumstances.

(q) On the day before the hearing, the outcome of the proceedings before the appeals committee became known. It set aside the deregistration of the NGF and reinstated its registration. It also granted the NGF three months from the date of the ruling to comply with the recommendation set out in the arbitration award of Mr N. Tjombe of 28 May 2012. As the NGF was thus no longer deregistered, Mr Namandje on behalf of the applicant correctly conceded that the applicant could no longer secure the relief contained in paragraphs 2, 3 and 4 of the notice of motion, all premised upon NGF's deregistration. He however submitted that the applicant was entitled to its costs having brought the application. He also sought an order that the applicant could on the same papers, duly amplified, approach this court in the event of the NGF not complying with the recommendations, set out in the arbitration award within the three month period referred to.

(r)

(s) In order to determine whether the applicant is entitled to its costs would necessitate a determination as to whether the applicant was entitled to the relief set out in the notice of motion prior to the lifting of the deregistration. As I have already pointed it out, there are two forms of reliefs sought in this application. In the first instance there is the *mandamus* sought against the Commission. Secondly there is the interdict sought against the NGF. These are dealt with in that sequence.

(t)

Mandamus against the commission

(u) It is well settled that the failure on the part of a functionary to perform an

administrative act is as irregular and unlawful as an administrative decision not properly taken. An aggrieved person may under the common law succeed in compelling a functionary to perform an administrative of act where that functionary is under a statutory duty to do so. This common law remedy flows from the common law remedy of review, thus described Innes CJ in *Johannesburg Consolidated Investment Co v Johannesburg Town Council*² in the following terms:

‘Whenever a public body has a duty imposed on it by statute, and disregards important provisions of the statute, or is guilty of gross irregularity or clear illegality in the performance of the duty, this court may be asked to review the proceedings complained of and set aside or correct them. This is no special machinery created by the Legislature: it is a right inherent in the Court, which has jurisdiction to entertain all civil causes and proceedings arising . . . in such a cause as falls within the ordinary jurisdiction of the Court.’³

It is also clear under the common law that where functionary failed to perform that administrative act within a reasonable period of time, an applicant would be entitled to approach the court by way of the *mandamus* to compel the performance of that act.⁴

(v) In order to succeed with this remedy, the applicant would need to establish that the Commission is under a statutory duty to perform the acts set out in paragraph 2 and 3 of the notice of motion and is failing to do so.⁵

(w) I specifically asked Mr Namandje to refer to the statutory provisions which the applicant relies upon and to point out which steps envisaged under the Act the Commission is obliged to take and had failed to do so. I specifically asked this question with regard to the relief sought in paragraph 2 where the

²1903 TS 111 at 115.

³Repeatedly followed by the courts. See *Mahambhelela v MEC for Welfare, Eastern Cape and Another* 2002 (1) SA 342 (SE) at 353.

⁴See Generally De Ville *Judicial review of administrative action in South Africa* (revised first edition, 2003) at 369 – 372. See also *Tumas Granite v Minister of Mines and Energy* 2013 (2) NR 383 (HC) at 385, par [6].

⁵*Thusi v Minister of Home Affairs* 2011 (20 SA 561 (N) at 578, par [43] and the authorities usefully collected by Wallis J, as he then was.

applicant seeks to compel the Commission in very wide terms to 'take all steps to carry out its functions' under the Act aimed at putting into effect its decision to prevent the NGF from engaging in activities pertaining to administration, supervision and organisation of gymnastics whilst it remained deregistered and in particular conducting trials and selection of national teams and participating in international competitions.

(x)

(y) Mr Namandje referred me to the structure of the Act and in particular the functions of the Commission under s3 which include:

- '(b) to co-ordinate, control, develop and foster sports activities;
- (c) to ensure the proper administration of national sports bodies and national umbrellas sports bodies;
- (d) to ensure that national sports bodies and national umbrellas sports bodies are complying with this Act and their constitutions and rules especially on discipline.'

(z) Mr Namandje also referred to the Commission's powers and functions to authorise national and international sports activities or events. He further referred to the provisions of s28 of the Act dealing with discipline of national sports bodies and national umbrellas sports bodies by the Commission. It was after all under this section that the NGF had been deregistered. It provides:

'(1) The Commission must ensure that every national sports body and national umbrella sports body complies with this Act, its constitution and rules and any applicable international legal instruments.

(2) Subject to subsection (3), the Commission may strike off the register the name of a national sports body or national umbrella sports body, if the Commission is satisfied that-

- (a) the body ceases to operate as a national sports body or national umbrella sports body in terms of this Act and its constitution;
- (b) the body fails to comply with this Act, the body's constitution or rules or any international legal instrument applicable to it; or
- (c) the body conducts its affairs in a manner which is contrary to the public interest.

(3) The Commission-

- (a) may not take any action in terms of subsection (2) before the body referred to in that subsection is given an opportunity to make representations in the matter to the Commission, after which the Commission may give any warning or directive;
- (b) may only take any action in terms of subsection (2) if the national sports body or national umbrella sports body after having been given a warning or directive under paragraph (a) continues with its non-compliance with this Act, its constitution or rules.'

(aa) Mr Namandje submitted that once the Commission had deregistered the NGF and required that it must stop its activities of conducting trials and selection of national team and future international participants representing Namibia, it was under an obligation to take steps against the NGF once it had been informed that sports body was continuing to organise and co-ordinate gymnastics in Namibia as if it had not been deregistered.

(bb) I asked Mr Namandje to refer me to the provisions of the Act which provided the statutory machinery for the Commission to act against the second respondent and what steps the Commission should have taken as opposed to the very broad formulation in the notice of motion.

(cc) Apart from referring to s26(5) which would disentitle a national sports body from receiving funding from the Sports Development Fund (the fund) created under the Act, he was not able to refer to any specific machinery created in the Act for the Commission to take steps against a non-compliant or delinquent national sports body other than referring to the Commission's functions and general powers under s3. The Commission would also have the power to withhold approval for the award of national sports colours to a sports person or team participating in an event organised by the deregistered NGF. The Commission may also decline its approval for the hosting of international sports event by the NGF or importantly decline to approve participation in an international sports event as a representative of Namibia under s33. If wanting the Commission to invoke that power, the applicant should ideally have referred

to that section and provided the Commission with full details of participation by the NGF in international sports events as a representative of Namibia in order to ensure that the Commission would not provide its approval the NGF and to ensure that it would then prohibit it from participating in the sports event in question.

(dd) Mr Namandje also submitted that the Commission had a duty to ensure compliance by sports bodies with the Act and was under a duty to interdict the NGF from engaging in activities it was not authorised to do, such as conducting trials and selection of national teams and the participation in international events representing the Republic of Namibia. He submitted that the Commission was under a statutory duty to apply for such a common law interdict against the NGF.

(ee)

(ff) Mr Ncube on behalf of the Commission submitted that the Commission was not authorised to take any further action once the NGF had appealed against its deregistration. As I have already pointed out, this is not correct. An appeal would not suspend the operation of the deregistration. He further submitted that once the appeal process was under way and until it was finalised, the Commission could take no further action. This submission must likewise fail for the same reason.

(gg) It would seem to me that before the Commission would be required to bring a common law interdict against an alleged delinquent sports body like the NGF to desist from the activities referred to, the applicant would need to specify the statutory provisions which the Commission refuses to or fails to invoke against the NGF and specify what the Commission is required to do under the Act. In my view, an applicant in proceedings of this nature would thus need to specify the statutory provisions in question and the manner in which the administrative body is refusing or failing to taking steps required by that statutory provision, and preferably but not necessarily after having been put on terms to do so. The applicant could for instance seek to compel the Commission to desist from providing any funding from the fund to the NGF after deregistration, given the specific statutory duty on the part of the Commission to confine funding to registered national sports bodies, if that were to have been the case.

(hh)

(ii) In the founding affidavit the applicant complained that it became aware of correspondence being sent out by the NGF to other clubs which it contended it was unlawful and in violation of the Commission's directive when deregistering the NGF.

(jj)

(kk) The applicant further states that it then called for and held a meeting with the Chairperson of the Commission to point out that the NGF was continuing to unlawfully run gymnastic affairs in Namibia as if it were not deregistered with reference to activities organised by the NGF. This approach is admitted by the Chairperson. The applicant also points out that communications were sent to the Chairperson of the Commission in which there was reference to 'incidents where the (NGF) was still proceeding to conduct its businesses as if it was not deregistered to the exclusion of the applicant'. As a consequence of the NGF conduct, the applicant complains that its gymnasts lost out in respect of two games conducted in South Africa and to Top Six and Zone Six games which appear from the documentation attached to the application to constitute international events held at international venues. There was also reference in the founding papers to a calendar of activities compiled from the NGF's programme. These included several international events at venues at Belarus, Israel, Scotland, the Ukraine, Egypt, South Africa and Zimbabwe. The complaint raised in the application was that the members of the applicant were precluded from participating in those international competitions where Namibian participation was arranged and co-ordinated by the NGF. This specific complaint is raised that NGF continues 'running, arranging and supervising competitions in contravention of the directive' of the Commission. The complaint thus is that the members of the applicant are excluded from activities arranged by the NGF.

(ll)

(mm) Mr Ncube's submission that the Commission had done what it could under the Act and needed to await the appeal, would not in my view absolve the Commission from its inaction established on the papers. The specific complaint raised by the applicant was the exclusion of its members from events arranged by NGF as a sports body. Some of those events are international events. It is clear from the papers that it was that very complaint which resulted in the

deregistration of NGF – on the basis of discriminating against members of the applicant by the excluding them from its activities. That would seem to have given rise to the action to be taken by the Commission. Plainly a national sports body organising a sports code should not wrongfully exclude clubs or persons from fully participating in that sport, such as determining eligibility and participation in international events and training (and its events generally). Conduct of that kind is in principle contrary to the public interest as the Commission correctly found in deregistering the NGF for that reason. The Act expressly proscribes national sports bodies from acting contrary the public interest.

(nn)

(oo) The Commission is tasked to ensure compliance with the Act and has a statutory duty to do so. This is emphatically spelt out in s28(1) quoted above. Where bodies fail to do so, the Commission may strike them off the register. This duty is consistent with the overall structure and intention of the Act – with the legislature establishing the Commission to regulate national sports and umbrella bodies through registration and the statutory machinery contained in the Act.

(pp)

(qq) Once it had deregistered the NGF, the Commission had the duty to see to it that the NGF complied with its order to that effect, as long as its directives were authorised by the Act. There was no debate on that score. The NGF did not dispute that the order made by the Commission was authorised by the Act. It did however dispute that it should have been deregistered and was ultimately upheld by the appeals committee. But once it was struck off the register, the NGF was required to desist from activities dependent upon registration and specified by the Commission. The Commission was in my view under a duty to ensure compliance with the Act on the part of the NGF, including after its deregistration. It was duty bound to invoke its statutory machinery to ensure compliance with the Act and its directives in the deregistration order. If it failed to do so within a reasonable time, the applicant would be entitled to compel the Commission to do so.

(rr) The applicant was in my view entitled to approach this court on the basis

of the Commission having reasonable grounds to believe that the NGF was participating in international events which it should not approve (given its deregistered status) and to compel the Commission to give the NGF notice under s33(4) of the Act for the purpose of taking the further steps contemplated by that section. In order to compel the Commission to take specific steps set out in the statute, an applicant should in my view specify the specific provisions and its entitlement to compel the functionary to take those steps as spelt out in statute. This the applicant has not done so with reference to this section or to any other action specifically authorised and required of the Commission by any other provision of the Act. Instead Mr Namandje contended that the Commission was required to seek a common law interdict against the NGF to comply with the Act. The applicant was in my view required to specify the sections and to establish that it had failed to exercise that duty.

(ss) It was not the applicant's case that the Commission had failed to take steps under s33 of the Act. This section was not even referred to in the applicant founding papers or in any correspondence putting the Commission on terms to take action. It would seem to me to be this section which could have been invoked against the NGF.

(tt)

(uu) It would follow in my view that the applicant was not entitled to the broad relief set out in paragraph 2 of the notice of motion but would only have been entitled to certain elements of the more specific relief referred to as if the Commission had been placed on terms to act under s33 against the NGF which it had failed to do. It would follow in my view that the applicant was not entitled to an order in terms of paragraph 2 of the notice of motion its current formulation but rather more confined relief with reference to s33 such as the conducting of trials, selection of national teams and participation or arranging or co-ordinating Namibia's participation in international events. It is clear to me that the Commission should have taken action under s33 after being placed in possession of sufficient factual material as is evidenced from the founding affidavit and not placed in dispute in the Commission's answering affidavit to prohibit the NGF from participation in international events as a representative of Namibia after being so informed by the applicant. In my view it was incumbent

upon the Commission to take steps under s33 (4) in those circumstances. If however the machinery in the Act were not to result in the Commission securing compliance with the Act, then it may have a duty to bring an interdict to compel compliance as argued by Mr Namandje. Even though this was not the case which it had to meet, the Commission did not tender to take such steps or even suggest them but rather persisted with inaction and seeking to justify it in the face of the NGF's defiance. But even though the applicant was not entitled to the extent of the relief set out in paragraph 2 as broadly and vaguely formulated, it would seem to me that it could have been entitled to certain of the relief adverted to paragraph 2 even though s33 had not been expressly invoked. Given the stance adopted by the Commission (of inaction pending the appeal), this would in my view have amounted to substantial success against it in this application.

(v)

(ww) As for the relief sought in paragraph 3 of the notice of motion, this was not pressed by Mr Namandje in argument and rightly so. It is clear to me from the answering affidavit of the Commission's Chairperson that the Commission had taken all reasonable steps to ensure that the disciplinary course should follow by the matter proceeding on appeal. In this context, it was *functus officio*. This is evident from the position of the appeals committee which made its ruling and specifically compelled the NGF to comply with the recommendations made by the arbitrator, Mr Tjombe within three months. It would follow that the applicant was not in my view entitled to this relief.

(xx) I turn to the relief sought against the second respondent.

Second respondent's (NGF) defence

(yy) Apart from taking the point of urgency, the NGF also contested the authority of the deponent to the founding affidavit and the authority of the applicant to bring the application. These points were understandably not pursued after applicant filed a replying affidavit.

(zz)

(aaa) In the answering affidavit, the second respondent did not dispute that it is

a sports body representing gymnastic clubs in Namibia. Its registration was thus as a national sports body. But Mr Titus argued that registration is voluntary and being deregistered would not bar the NGF from carrying its activities except where those activities may attract the application of certain provisions of the Act. As a general proposition this submission is sound. The difficulty which this argument encounters is that a national sports body is defined in the Act as one which is registered and that one of the legislative purposes of the Act is for the Commission to regulate sports bodies which run sports codes in Namibia and ensure that they comply with the Act when they do so.⁶

(bbb)

(ccc) Mr Titus argued that it was open to the NGF to represent clubs affiliated with it, with the exception of the applicant, as the applicant had not paid fees and was thus not registered with it. He argued that club affiliation was thus not dependent upon registration. He submitted that s26 (1) emphasises the voluntary nature of the registration. It provides:

‘A sports body which wishes to register as a national sports body or national umbrella body must apply to the Commission for registration in the form and manner as prescribed.’

He further referred to the regulations promulgated under the Act which state that sports bodies wishing to apply for registration ‘may apply to the Commission in the form or form 1 contained in the schedule’. He correctly submitted that there was no obligation on a sports body to register and that it could conduct activities without being registered as the Act did not contain a prohibition of sports bodies conducting affairs unless registered.

(ddd) It is well established that a voluntary association, like any natural person, can conduct any activity unless proscribed by law. Mr Titus submitted that the only benefit for a sports bodies upon registration would be eligibility for funding as contemplated under s26 (5) of the Act. He submitted that whether registered or not, a sports body would not be able to host an international event in Namibia except with approval of the Commission. Nor could it participate in international sports events as a representative of Namibia except with the approval of the Commission. Save for these provisions, Mr Titus submitted that there was no

⁶S1 of the Act.

prohibition on the NGF from carrying out activities which did not fall within these categories. He further submitted that the applicant had not established a basis for the interdictory relief sought. He pointed out that it was not contended that the NGF hosted international sports events or participated in international sports events as a representative of Namibia. He submitted that the high watermark of the applicant's case is the assertion that the NGF was 'unlawfully running gymnastic affairs as if it was not deregistered' without any unlawful act being referred to in the founding papers.

(eee) In reply, Mr Namandje referred to the statement in the founding papers that the second respondent had a programme in respect of which it co-ordinates and arranges (Namibia's) participation in international events as a representative body of gymnasts or gymnastic clubs in Namibia. That much is also clear from the annexure which was attached which, as I have pointed out, referred to international competitions including zone championships and training and a Commonwealth training camp held in various venues internationally. By co-ordinating participation of Namibian clubs in those events, the NGF was in my view representing Namibia and acting as a national sports body in doing so. These allegations were not placed in issue in the answering affidavit on behalf of the NGF. Indeed, it contended that deregistration would not bar (it) from running (gymnastics as a) sport code in Namibia. I beg to differ with that approach. The Act in my view clearly require registration to conduct these activities. It does so for good reason. This is because national sports bodies or umbrella bodies would be representing Namibia in their co-ordination and participation at events of that nature, even if national colours were not specifically awarded when participating. The legislature understandably saw fit to require registration with the Commission so that the Commission could exercise the functions and powers of supervision and regulation over such bodies in their representation of Namibia. Registration is plainly not merely for such bodies to qualify for funding from the Fund, as I have already said.

(fff) As I understand the allegations in the founding affidavit which were not placed in issue in the NGF's answering affidavit, it would seem that the NGF was, as a national sports body participating in international sports events and

doing so as a representative of Namibia. This is expressly proscribed in s33(7) which expressly requires:

'A sports person, sports club or sports body other than a sports person, sports club or sports body associated with the uniformed services, who or which is not registered with the Commission may not participate in any international sports event as a representative of Namibia.'

As I understand the allegations which are not put in issue, the NGF was co-ordinating participation on behalf of that sports code in Namibia at international gymnastic sporting events. Registration would in my view be required to do that.

(ggg)

(hhh) As the applicant was excluded by the NGF from its co-ordinating of Namibian representation at those events, the applicant would in my view have standing to interdict the NGF from engaging in those activities, in conflict with the Act in the event of the Commission not taking action under s33 against the NGF which in this instance, the Commission had not done so.

(iii) It would follow in my view that the applicant would be entitled to approach this court for an interdict against the NGF in respect of the activities referred to in the founding affidavit and not essentially placed in issue in the answering affidavit. The applicant made out a case for such an interdict.

(jjj)

(kkk) It would further follow in my view that the NGF would be required to pay the costs of the applicant in respect of the interdictory application sought against it. For the purpose of the taxing master, I would estimate that the time spent with regard to the interdictory relief against the second respondent at the hearing took up two thirds of the time spent in argument.

(lll) I accordingly make the following order.

- 1) The first respondent is directed to pay the applicant's costs in respect of the relief sought against it in prayer 2 of the notice of motion;
- 2) The second respondent is directed to pay the applicant's costs in respect of the application for the relief sought against it.

D SMUTS

Judge

APPEARANCES

APPLICANT: S. Namandje
Instructed by: Sisa Namandje & Co. Inc.

FIRST RESPONDENT: J. Ncube
Instructed by: Government Attorney

SECOND RESPONDENT: I. Titus
Instructed by: Koep & Partners