IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MTHATHA)

CASE NO:1461/2025

In the matter between:

SINENKANI FOOTBALL CLUB Applicant

and

SOUTH AFRICAN FOOTBALL ASSOCIATION 1st Respondent

ABC MOTSEPE LEAGUE, EASTERN CAPE

PROVINCE 2nd Respondent

THENJANA MBANGATHA 3rd Respondent

SIKELELA MTANGAYI 4th Respondent

ADVOCATE R MKHONTO 5th Respondent

FC RAVENS 6th Respondent

AMAVARARA FC 7th Respondent

JUDGMENT

RUSI J

[1] The sport of football, worldwide, places emphasis on rules and regulations that govern its various aspects on and off the field of play. Such rules and regulations are administered through a unique system of institutional structures. In the South African context of the institutional hierarchy of football structures, the first respondent, the South African Football Association (SAFA) is the national administrative body that governs and controls football.

[2] SAFA's highest decision maker is the National Executive Committee, and the Chief Executive Officer oversees its operations. Various officials acting in various capacities are employed by SAFA. The fifth respondent is one of those officials and he is SAFA's legal officer.

[3] ABC Motsepe League, Eastern Cape Province (the second respondent or the League), which is a special member of SAFA, administers amateur football in the Province of the Eastern Cape. The fourth respondent is the Executive Officer of the second respondent. He is SAFA's designated official. In the present case, he is the official of SAFA who received and determined a complaint that the applicant filed with SAFA within the scope of SAFA's dispute resolution processes. The third respondent is cited in these proceedings as the official of the first and second respondents serving as a match commissioner and who is listed in SAFA Referees' Committee.

[4] Several football clubs are registered with the second respondent, as well as with the first. The applicant and the sixth respondent are among the football clubs that are registered with the first and second respondents, and they participate in the Men's Eastern Cape Province Inland stream of the League competition.

[5] In this application the applicant seeks, in the main, on urgent basis, an order that the impending SAFA competition playoffs match between the sixth and seventh respondents be interdicted; and a review of two decisions that the fourth and fifth respondents made, respectively, in the exercise of their public powers as SAFA Officials. The third and fourth respondents made the said decisions in connection with the applicant's complaint filed in terms of the SAFA Competition Rules (the complaint). The application is opposed by the second, third, fourth and sixth respondents only.

[6] The complaint was filed by the applicant with the first respondent following a game it played and lost against the sixth respondent on 25 January 2025 in a competition fixture of the League. The basis of the complaint was that the third respondent, whom the first respondent appointed as the match commissioner, had a direct or indirect connection with the sixth respondent, and this gave the sixth respondent unfair advantage over it.

[7] SAFA has enacted regulatory instruments which bind its administrators, members and affiliates alike, at local, provincial and national levels. Those are its Competitions Uniform Rules (the Competition Rules), Disciplinary Code and Regulations. The Competition Rules make provision, inter alia, for the appointment of match officials and match commissioners from time to time to oversee specific football matches. They also make provision for dispute resolution in cases of disputes arising in the course of or in connection with SAFA competitions.

[8] Competition Rule 17 provides for a five-tiered process of dispute resolution, namely, protests; complaints; dispute resolutions; appeals and arbitrations which are monitored by officials that SAFA designates. In terms of Rule 19.1 a team that has not lodged a protest in respect of a game in which it participated, may lodge a complaint with the League, in respect of any act of misconduct or offence allegedly committed.

[9] In the complaint, the applicant contended that the third respondent's appointment offended SAFA Competition Rule 30.1 which reads:

"The Chief Executive Officer or the designated SAFA Official will appoint match commissioners (who shall not be connected directly or indirectly to any participating team), from a list to be provided by the relevant referees Committee from time to time for specific games."

[10] The competitions of the League are played seasonally in streams that are determined according to the geographical area and in accordance with various technical rules. These rules, in turn, determine the relegation and promotion of football teams across various echelons of the SAFA Competition Leagues. The second respondent is constituted of the Inland and Coastal streams of football competitions. The winner of the League is determined in the playoffs between the Inland and Coastal streams of the league and would qualify to participate in the SAFA National First Division. SAFA determines competition fixtures.

[11] In the present case, SAFA has determined that the sixth and seventh respondents would contest the title of the League winner in the playoffs that would take place on 11 April 2025.[1] Below I set out the factual background to this application.

[1] Even though on the applicant's version the date of the playoffs has been determined as 11 April 2025, at the hearing of the application the parties made common cause of the fact that the playoffs will be held on 11 or 12 April 2025.

The factual background

[12] On 25 January 2025 at Mphuthumi Mafumbatha Stadium in Mbizana, the applicant and the sixth respondent played the last football match in the second respondent's Inland stream (the match) with the sixth respondent as the host team. When the sixth respondent won the match, it earned three points which placed it in the first position on the League table with a total of 36 points. Second to the sixth respondent was the applicant with 35 points.

[13] The sixth respondent's victory rendered it eligible to contest the title of the League winner in the already mentioned playoffs where it would play against the seventh respondent which participates in the Coastal stream of the League. The winner of the playoffs would in turn earn a spot in the National First Division of SAFA for the season opening in July 2025.

[14] After the match of 25 January 2025, and at the emergence of allegations that the third respondent is the biological father to one Mr Ntando Mbangatha, a member of the sixth respondent who participated in the match, the applicant filed a complaint with the first respondent in terms of Competition Rule 19.1, in which it contended that the first respondent violated the provisions of Competition Rule 30.1.

[15] In a letter to the applicant dated 06 February 2025 titled *"dismissal of a complaint by Sinenkani FC"*, the fourth respondent wrote the following:

'This communication refers to the complaint lodged by Sinenkani FC dated 30 January 2025.

Unfortunately, the complaint has been deemed to be non-compliant due to the following reasons:

1. Provisions of rules 19.3, 19.4, and 19.5.

Therefore, provision 19.6 has been invoked, the complaint fee will be returned in the earliest convenience (sic).

Please if you feel any form of injustice about the decision, please feel free to lodge an appeal.

Also be advised that all appeals shall go straight to arbitration.'

[16] Upon receiving this outcome of the complaint, and on 13 February 2025, the applicant filed an appeal with the first respondent against the dismissal of its complaint by the fourth respondent. In the appeal it stated the following:

(a) The appointment of the third respondent as match official despite him being the father of Ntando Mbangatha offended Rule 30.1 of the Competition Rules.

(b) The complaint in this regard was filed within the period prescribed by Competition Rule 19.1.

(c) The fourth respondent's response to the complaint falls foul of the dispute resolution process set out by SAFA in its Competition Rules in that there was no objective, independent disciplinary committee of SAFA who presided over the complaint.

(d) The fourth respondent had no capacity to preside over the complaint as he did, as such, his conduct deprives it of justice rendering the complaint as good as unattended.

[17] In response, the fifth respondent as SAFA's designated official wrote to the applicant on 17 March 2025 as follows:

"Please take note that Article 19.5 of SAFA Competition Rules states that the complaint must not be made against the referee and/or assistant referee's decisions connected with play in any game, except if the complaint contains an allegation of corruption.

Please take further notice that Mr Sikelela Mtangayi dismissed it based on the SAFA Rules and Regulations. We therefore cannot put this matter before the Arbitration Tribunal."

[18] This response was followed by a letter from the applicant's legal representatives dated 17 March 2025 and addressed to the Chief executive Officer of the first respondent in which it challenged the fifth respondent's response stating that he lacked the necessary jurisdiction to determine the complaint as he did. The applicant's legal representatives persisted with the request that the applicant's complaint be placed before the Arbitration Tribunal and demanded a reply to the

correspondence by close of business on 17 March 2015 failing which litigation would ensue in order to protect the applicant's rights.

[19] It was on 25 March 2025 that the first respondent's Chief Executive Officer wrote to the applicant requesting it, inter alia, to choose, by close of business on that day, an Arbitrator in terms of Article 81.4 of the SAFA Disciplinary Code. This letter attracted no response from the applicant, and on 26 March 2025 at 16h58, the applicant served this application on the respondents per electronic mail (email) and subsequently through the Sheriff on 26, 27 and 31 March 2025, respectively.

The application

[20] The application served before me on 01 April 2025, and on this day, it was postponed to 02 April 2025 for final determination. This was done in order to allow further filing of papers by the parties as it appeared on 01 April 2025 that the application had become opposed.

[21] It is necessary, for reasons that will become clear later on in this judgment, that I reproduce, in part, the notice of motion in which the relief that the applicant seeks is set out. That relief is set out as follows:

"2. That the match scheduled to play on 11 April 2025 between the sixth and seventh respondents is interdicted pending the determination of paragraphs 3, 4, 5.1, 5.2 and 5.3 below.

3. Declaring the decision of the fourth Respondent dated 06 February 2025 that dismissed the applicant's complaint to be invalid, unlawful, unconstitutional and in violation of Rules 19.7; 19.7.1; 19.7.2; and 19.8 of the SAFA Competition Uniform Rules and section 33(1) of the Constitution of the Republic of South Africa Act No. 108 of 1996.

4. Declaring the decision of the Fifth Respondent dated 17 March 2025 that refused the Applicant's appeal and arbitration as being invalid, unlawful, unconstitutional and in

violation of Rules 25(1) and (3) of the SAFA Competition Uniform Rules and section 33(1) of the Constitution of the Republic of South Africa Act No. 108 of 1996.

5. The above two decisions are reviewed and set aside and replaced with the following orders:

5.1 The First Respondent is found to be in violation of Rule 30(1) of the SAFA Competition Uniform Rules by having appointed the Third Respondent, who accepted the appointment for being a match commissioner in a match the Applicant and the Sixth Respondent played on 25 January 2025, while the Third Respondent's son was on the team list for and played for FC Ravens, is hereby declared void ab initio, invalid and unlawful.

5.2 The First Respondent is directed to suspend the Third Respondent for the period to be determined by the First Respondent in terms of Rule 19.11.5 of the SAFA Competition Uniform Rules; and

5.3 Ordering the Sixth Respondent to forfeit the three points which it was awarded in the match played between the Applicant and Sixth Respondent on 25 January 2025 in terms of the SAFA Competition Uniform Rules.

6. The First Respondent is directed to update the league standing of the ABC Motsepe League Eastern Cape Inland Stream within two days after this order.

7. The first Respondent is directed to announce a date within two days after having updated the league standing of the ABC Motsepe League Eastern Cape Inland Stream, for the decider between the Inland and Coastal Streams, to be played within 14 days from the date of this order. . ."

[22] In what follows I set out the facts on which the applicant relies in support of this application.

The applicant's case

(a) Urgency

[23] In short, the applicant alleges that the matter is urgent as it relates to a crucial legal interest – its standing in the already closed League. It further states that the first, second, fourth and fifth respondents have deprived it of its right of recourse to SAFA's internal dispute resolution processes. According to the applicant, the sixth respondent's victory came about as a result of an irregularity and unlawfulness that occurred when the third respondent was appointed as match commissioner in the already mentioned circumstances.

[24] The applicant goes on to state that its attempt on 17 March 2025, to request that dispute be redirected to arbitration as a way of preventing any injustice to it proved futile. Furthermore that, the playoffs fixture was determined by the second respondent on 24 March 2025. Therefore, it had no other available recourse except the launching of these proceedings. It rejected the first respondent's invitation to appoint an arbitrator as it viewed it as a reaction to the stance it took when it launched this application, and a mala fide attempt to prevent it from seeking recourse in this Court. The lack of bona fides on the first and second respondent, says the applicant, is also implicit from their failure to make an undertaking that the playoffs scheduled for 11 April 2025 will be suspended pending the determination of the dispute by the Arbitration Tribunal.

[25] The applicant further states that it will not be afforded substantial redress at the hearing of the application in due course, and it will be prejudiced should the sixth respondent be permitted to contest the Provincial League title against the seventh respondent. It will have lost the opportunity to ventilate its complaint; the opportunity to contest the title of the League winner at the playoffs; and the opportunity to participate in SAFA's First National Division.

(b) The interdictory relief

[26] The applicant states that on the same grounds on which it relies to support the urgency of the application, it has established the requirements for the granting of the interdict it seeks. This averment is couched in paragraph 10.1 of the applicant's founding affidavit as follows:

"The requirements for interim interdict have been satisfied on the facts set out and discussion. above. To avoid repetition, each requirement will not be dealt with under separate topic. The facts and discussion should be considered as a whole."

(c) The substitutory relief

[27] The deponent of the applicant's founding affidavit alleges that subsequent to the emergence of the allegation that the third respondent is the father to Mr Ntando Mbangatha, he conducted a full investigation which confirmed the relationship. The grounds on which the applicant relies in seeking the substitutory relief can conveniently be summarized as follows:

(i) The third respondent, by virtue of being the biological father of Mr Ntando Mbangatha who played for the sixth respondent in the match of 25 January 2025, was directly or indirectly connected to the sixth respondent, and should not have been appointed as the match commissioner.

(ii) The third respondent had an ethical duty to disclose to the first and second respondents his relationship with the already mentioned player to avoid a violation of Rule 30.1 of the SAFA Competition Rules. The first and second respondents' conduct in appointing the third respondent as match official contravened the already mentioned Rule 30.1, and consequently, it invalidated the outcome of match. This is so, the applicant says, because the sixth respondent obtained unfair advantage due to the relationship between the third respondent and the team member of the sixth respondent, Mr Ntando Mbangatha.

(iii) Despite its compliance with the first respondent's complaint procedure, the applicant's complaint was improperly determined. The fourth respondent had no jurisdiction to dismiss

the complaint as no such powers are conferred on him by Rule 19.6 in terms of which he purportedly dismissed it. He dismissed the complaint on irrelevant grounds.

(iv) The fourth respondent failed to invite the third respondent to respond to the allegations of his relationship with Mr Ntando Mbangatha, and he failed to refer the matter to the disciplinary hearing.

(v) The fifth respondent also incorrectly dismissed the complaint on irrelevant grounds when he relied on Rule 19.5. By refusing to refer the complaint to the Arbitration Tribunal, he wrongly constituted himself the appeal and arbitration tribunals concurrently, whereas the Competitions Rules make provision for the hearing of appeal by an appeals committee and a further by the Arbitration Tribunal. When he did so, he deprived the applicant of the right to have the complaint ventilated before at the disciplinary hearing.

The case for the second to fourth respondents

[28] In opposing the application, the second to fourth respondents raised three points in limine, namely, that this Court has no jurisdiction to hear this application as the applicant has not exhausted the SAFA internal remedies available to it; lack of urgency; and failure to establish the requirements for the granting of an interdict.

[29] Regarding the point in limine of lack of jurisdiction, the second to fourth respondents contend that the decision of the fourth respondent was ‘corrected’ by the first respondent in the letter in which the applicant was invited to appoint an arbitrator of its choice who would determine the complaint in the Arbitration Tribunal.

[30] In refuting the urgency contended for by the applicant, the second to fourth respondents state that the applicant ought to have brought the application on 17 March 2025 upon receipt of the decision of the fifth respondent, and to the extent that it delayed in launching these proceedings, the urgency it now asserts is self-created.

[31] As regards the applicant's failure to satisfy the requirements for the grant of an interdict, the second to fourth respondents contend that the applicant has not proved that it will suffer irreparable harm if the interdict it seeks is not granted. In this regard, they further state that beyond the result of the match of 25 January 2025, the applicant has no entitlement to any further recourse as it did not play the match under protest. This means that there is no irreparable harm facing the applicant. According to the second to fourth respondents, had the applicant played the match under protest, it would be entitled to a reversal of the match result upon due process being followed.

[32] In support of the contention that the applicant has other satisfactory remedy available to it, the second to fourth respondents state the first respondent opened the avenue of arbitration by inviting the applicant to appoint an arbitrator of its choice. Therefore, the applicant has no entitlement to the interdictory relief it seeks as there still remains the avenue of arbitration as an alternative remedy.

[33] On the merits of the review application, and without specifically denying that there is a father-and-son-relationship between the third respondent and Mr Ntando Mbangatha, the second to fourth respondents state that the applicant has failed to establish how the alleged relationship influenced the outcome of the match; and how it gave the sixth respondent unfair advantage. In this regard, they further contend that the third respondent's role was, in any event, a preparatory one having no influence on the play in the game between the applicant and the sixth respondent.

[34] Further, according to the second to fourth respondents, the applicant has failed to establish the dispensation in terms of which it claims that the sixth respondent ought to forfeit the three points it earned upon winning the match. On this score, they contend that the match between the two teams was played in a fair manner, and the alleged relationship between the third respondent and Mr Ntando Mbangatha had no influence on the sixth respondent's victory.

The case for the sixth respondent

[35] Similar to the second to fourth respondent, the sixth respondent raised the already mentioned points in limine.

[36] According to the sixth respondent, the urgency with which this application has been brought is self-created. This is so, it says, because the applicant had an option, upon the redirection of the complaint to the Arbitration Tribunal by the first respondent in the letter dated 25 March 2025, to request that the playoffs be suspended pending the determination of their complaint by the Arbitration Tribunal. The applicant elected to ignore the first respondent's invitation to appoint an arbitrator.

[37] The sixth respondent further states that the applicant has failed to establish that it will not attain substantial redress at the hearing of the application in due course for the same reason that it had an option to request that the first and second respondents suspend the playoffs.

[38] As regards the interdictory relief, the sixth respondent states that the applicant has failed to prove that it will suffer irreparable harm if the interdict is not granted. In making this assertion, the sixth respondent relies on the fact that the applicant has an available satisfactory remedy in the form of the arbitration avenue that the first respondent opened by its letter dated 25 March 2025.

[39] On the merits of the review relief, the sixth respondent contends that the first respondent revoked the fifth respondent's decision dated 17 March 2025, and it was entitled to do so since the fifth respondent did not have the competence to decide the appeal as he did. The sixth respondent states that there is, therefore, no decision to be reviewed, and in any event, the applicant's complaint was correctly determined.

[40] Regarding the fifth respondent's letter dated 17 March 2025, the sixth respondent states that it did not convey a dismissal of the applicant's appeal but merely made reference to the fact that the complaint was dismissed by the fourth respondent due to its non-compliance with the relevant Competition Rules.

[41] The chairman of the sixth respondent and deponent of its answering affidavit denies knowledge of the alleged relationship between Mr Ntando Mbangatha and the third respondent. He further states that there is, in any event, no direct or indirect connection between the third respondent and the sixth respondent, and no unfair advantage was gained by the sixth respondent from the third respondent's appointment as match commissioner. According to the sixth respondent, Competition Rule 30.1 refers to a connection with the football team and not its individual members. In tandem with this contention, the sixth respondent states that Mr Ntando Mbangatha ought to have been joined in these proceedings in order to refute or confirm the allegations that he is the third respondent's biological son.

The applicant's reply to the opposition

[42] In reply to the second to fourth respondents' answering affidavit, the applicant states, in the first instance, that the deponent of their answering affidavit has no authority to depose to the answering affidavit on behalf of the first respondent. Relying on article 35.1 of the SAFA Statutes,[2] which deals with authority to litigate

[2] SAFA Statues – Last amended by SAFA Ordinary Congress on 26 March 2022.

on behalf of SAFA, the applicant contends that the deponent of the second to fourth respondents' answering affidavit has no authority to litigate on behalf of SAFA.

[43] I must interpose to mention that attorneys representing the second to fourth respondents delivered a notice of filing by which they filed the answering affidavit of the said respondents. That being so, the title of the answering affidavit indicated that it was the first to fourth respondents' affidavit. At the hearing of the application, I invited Mr *Baceni* who appeared for the second to fourth respondents to clarify the position. He submitted that the answering affidavit was erroneously titled that way. That this must be so, was also accepted by Mr *Vobi* who represented the applicant, and Mr *Skoti* who represented the sixth respondent. In order to avoid any further delay in the hearing of the application, no supplementary affidavit was deemed necessary to cure the defect. With this said, it is instructive to re-state the legal position regarding the issue that the applicant raised. I do so below in brief terms.

[44] A party who wishes to challenge another party's authority to institute proceedings or oppose them must do so in terms of Rule 7(1) of the Uniform Rules of Court which provides:

'Subject to the provisions of sub rules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, where after such person may no longer act unless he satisfied the court that he is authorized so to act, and to enable him to do so the court may postpone the hearing of the action or application.'

[45] No such notice in terms of Uniform Rule 7(1) was delivered. I emphasize that it is not with the authority to depose to an affidavit that Rule 7 (1) relates. A deponent to an affidavit does not require authority to depose to an affidavit in motion proceedings.[3]

[46] The applicant further states that since the second to fourth respondents did not specifically admit or confirm the existence of a father -and-son-relationship between the third respondent and Mr Ntando Mbangatha, the allegation it makes in that regard must be taken as being admitted. It further states that the incompetence of the fourth respondent in dealing with its complaint, and his failure to appreciate the spirit and purport of the Competition Rules is the reason why this Court should intervene and grant the relief that it seeks.

[47] Other than the foregoing, the applicant persisted in its replying affidavit with the contentions it made in the founding affidavit in support of the relief it seeks. It denies that it precipitately approached this Court and that there existed an avenue to determine the complaint.

[48] The applicant makes the following principal contentions in reply to the sixth respondent's answering affidavit: it is incorrect that the first respondent was entitled to revoke the decision of the fifth respondent. In law, an administrative decision stands until it is set aside by way of judicial review. The letter dated 17 March 2025 that it wrote to the first respondent requesting that the complaint be redirected to arbitration did not alter this legal position. The decisions of the fourth and fifth respondents stand, and therefore, no internal remedy existed for the applicant to explore.

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[3] *Ganes and Another v Telecom Namibia Ltd.* (608/2002) [2003] ZASCA 123; [2004] 2 All SA 609 (SCA) (25 November 2003), at 615, para 19.

[49] The first hurdle that the applicant must surmount is that of satisfying this Court that this application warrants being heard on urgent basis. It is to this issue that I now turn.

Urgency

[50] A determination of urgency in application proceedings entails the question whether the applicant will be afforded substantial redress at the hearing of the matter in due course.[4] Uniform Rule 6(12) provides:

"*(a)* In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as to it seems meet.

(b) In every affidavit or petition filed in support of any application under paragraph *(a)* of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."

[51] The facts of each case determine whether the applicant will be afforded substantial redress at the hearing in due course. In the present case, on 06 February 2025, it was still open to the applicant to explore the next internal remedy of an appeal against the decision of the fourth respondent. A litigant cannot be penalized for attempting to resolve the dispute before instituting court proceedings.[5] Even though the applicant filed its appeal on 13 February 2025, it was only on 17 March 2025 that the fifth respondent made a decision on the appeal. The first respondent's letter inviting the applicant to choose an arbitrator came about on 25 March 2025.

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[4] *Luna Meubels Vevaarrdigers (Edms) BPK v Makin (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W); *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

[5] *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) at 94C-D.

The contention that there was a delay in the launching of this application and that urgency that the applicant contends for is self-created cannot be sustained.

[52] The applicant has established that it will not obtain substantial redress at the hearing of this application in due course – the playoffs scheduled to take place on 11 or 12 April 2025 would have come to pass, and it would have lost the opportunity to contest the title of the League winner and be eligible to participate in the SAFA's First National Division. In any event, this Court is clothed with the discretion to resolve a dispute speedily where the circumstances of the case demand. This is one such matter. Form must not be allowed to trump substance. I am therefore satisfied that the matter is sufficiently urgent.

The points in limine

[53] The point in limine regarding the availability of a suitable alternative remedy in relation to the interdictory relief that the applicant seeks is inextricably linked to the point in limine regarding the applicant's failure to exhaust internal remedies before seeking the review, and the question whether the letter of the first respondent dated 25 March 2025 constituted a valid act of revocation of an administrative decision. It is convenient to deal with these three issues simultaneously when it will be meaningful for me to do so later on in this judgment. First to be discussed is the point in limine that the applicant has failed to establish that it will suffer irreparable harm if the interdict is not granted.

Irreparable harm

[54] In this regard, the applicant must establish a reasonable apprehension of injury in that a reasonable person faced with the same facts would entertain such apprehension of injury. While the applicant is not required to prove that on a balance of probabilities of undisputed facts he will suffer harm, he must show that objectively his fear of harm is well grounded in the sense that it is reasonable to

apprehend that injury will result.[6] It is not in dispute that the date determined for the playoffs has not been reversed by the first and second respondents. The applicant's assertion that it will lose an opportunity to contest the provincial title which is a precursor to a spot in SAFA's National First Division must prevail. This point in limine is accordingly dismissed.

The non-joinder of Ntando Mbangatha

[55] Even though the non-joinder of Mr Ntando Mbangatha was not pertinently raised in the sixth respondent's papers as a point in limine, it is necessary that I deal with it at this point. A party should be joined in legal proceedings if an order of the court cannot be sustained or carried into effect without prejudicing that party, unless the court is satisfied that the party has waived its right to be joined.[7] In *Absa Bank Ltd v Naude NO*[8] it was held:

'[10] The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined. In *Gordon v Department of Health, Kwazulu-Natal* it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined.' (foot notes omitted)

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[6] *Free State Gold Areas Ltd v Merriespruit (Orange Free State) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 515; *Minister of Law and Order and Others v Nordien and Another* 1987 (2) 894 (AD) at 896F-I and all authorities cited therein; *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* (462/07) [2008] ZASCA 78; [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA) (30 May 2008), para 21.

[7] *Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A) at 659; BoE Trust Ltd NO and Another (in their capacities as co-trustees of the Jean Pierre De Villiers Trust* 5208/2006) (846/11) [2012] ZASCA 147; 2013 (3) SA 236 (SCA) (28 September 2012), para 20; *Road Accident Fund v The Legal Practice Council and Others* (58145/2020) [2021] ZAGPPHC173; [2021] 2 All SA 886 (GP); 2021 (6) SA (GP) (9 April 2021); para 9.

[8] *Absa Bank Ltd v Naude NO* (20264/2014) [2015] ZASCA; 2016 (6) SA 540 (SCA) 97 (1 June 2015).

[56] And, in *Judicial Service Commission and Another v Cape Bar Council and Another*[9], the court held:

'It has now become settled law that the joinder of a party is only required as a matter of necessity- as opposed to a matter of convenience- if that party has a direct and substantial interest which may be affected prejudicially by the judgment of court in the proceedings concerned. The mere fact that a party may have an interest in the outcome of the litigation does not warrant a plea of non-joinder...'[10]

[57] No substantial relief is sought against Mr Ntando Mbangatha as an individual. The football club for which he played on 25 January 2025, and which will be adversely affected by the relief that the applicant seeks is a party to these proceedings cited as the sixth respondent. It was not necessary to join Mr Ntando Mbangatha in these proceedings. The point of law of non-joinder cannot be sustained. I turn to deal with the merits of the review.

The parties' submissions

[58] Regarding the interdictory relief, Mr *Vobi* submitted that from the fact that the applicant stands to lose an opportunity to contest the title of the League winner and of participating in the First National Division of SAFA; together with the fact that the door to the ventilation of its complain at arbitration was closed by the fifth respondent, the applicant has established the requirements for the granting of an interim interdict.

[9] 2013(1) SA 170 (SCA) at para 12; *Bowring NO v Vredersdorp Properties CC* 2007 (5) SA 391 (SCA).
[10] Op cit, para 12.

[59] As regards the review relief, Mr *Vobi* submitted that from the abundance of case law,[11] the decisions of the fourth and fifth respondents are administrative action which is susceptible to review. In this regard, he submitted that the applicant brings this review on urgent basis in terms of the Promotion of Just Administrative Justice Act 3 of 2000 (PAJA). The reviewability of the two decisions, so the submission went, arises from the fact that the applicant was not afforded a hearing as the complaint was not adjudicated in accordance with the mandatory provisions of Competition Rule 19. Furthermore, the fourth respondent did not have the powers to dismiss the complaint, he failed to follow the process set out in Competition Rule 19.7 and 19.8.

[60] Further according to Mr *Vobi*, if regard is had to the need to maintain the integrity of the game of football, Rule 30.1 of the Competition Rules required that a match commissioner be someone in respect of whom there would be no perception of bias, and since in this case the third respondent is the father of a team player of the sixth respondent, he had an indirect or direct connection with the sixth respondent.

[61] Dealing with the purported revocation of the fifth respondent's decision by the first respondent, Mr *Vobi* submitted that in terms of the law as it stands that revocation is invalid, and the decision has a binding effect by reason of factual existence until a court of law sets them aside.

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[11] *Ndoro and Another v South African Football Association and Others* (16/16836) [2018] ZAGPJHC 74; [2018] 3 All SA 277 (GJ); 2018 (5) SA 630 (GJ) (24 April 2018) (*Ndoro*); *Ajax Cape Town Football Club and Another v Mokhari NO and Others* (18413/2018) [2018] ZAGPJHC 435 (2 July 2018) (*Ajax*), para 29.

[62] Mr *Skoti* who represented the sixth respondent, submitted that nowhere in its founding papers has the applicant made a case for the interdictory relief it seeks. He refuted the notion that the interdictory relief that the applicant seeks is consequential upon the urgent review relief sought. He further submitted that the declaratory relief that the applicant seeks stands as the main relief on its own and must therefore be determined in accordance with the provisions of the law regarding the court's powers to grant a declarator.[12]

[63] According to Mr *Skoti*, the review application must be treated as being brought under the principle of legality. It was his view in this regard that no grounds of review under PAJA have been set out in the applicant's founding papers. Mr *Skoti* further submitted that the first respondent acted correctly in revoking the decision of the fifth respondent, and this finds support in the applicant's own request dated 17 March 2025, that the complaint be redirected to arbitration. He further submitted on this score, that the applicant's resort to these proceedings is disingenuous, and it is an act of abuse of the process of this Court.

[64] Mr *Baceni* who represented the second to fourth respondents, indicated that he joined hands with Mr *Skoti* in the submissions he made on behalf of the sixth respondents. It was his submission, on the other hand, that in law, the applicant's request dated 17 March 2025 for the redirection of the complaint had no effect and was in fact legally incorrect. As for the act of revocation of the fifth respondent's decision by the first respondent, Mr *Baceni* submitted that the purported revocation is inconsistent with the law.

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[12] Reference was made in the sixth respondent's heads of argument to *JT Publishing (Pty) Ltd v Minister of Safety and Security* [1996] ZACC 23; 1977(3) SA 514 (CC at 525, para 15; *Reinecke v General Insurance Ltd* 1974 (2) SA 84 (AD) at 95; *Adbro Investment Company Ltd v Minister of the Interior* 1961 (3) SA 283 (T) at 285B-D.

The law

[65] An applicant for an interim interdict must establish three requisites, all of which must be proven, namely, a prima facie right which it seeks to protect by means of the interdict; actual injury or a well-grounded apprehension of injury if the interdict sought is not granted; and that there is no other alternative appropriate relief available to it. The court will also consider whether the balance of convenience favours the grant of the interdict. This is settled law.[13]

[66] In determining what an appropriate alternative remedy is, the circumstances of each case must be considered. In *Hotz and Others v University of Cape Town*[14]*,* the following was said of the requisite of absence of an alternative remedy:

'[T]he existence of another remedy will only preclude the grant of an interdict where the proposed alternative will afford the injured party a remedy that gives it similar protection to an interdict against the injury that is occurring or is apprehended. . . The fact that one of the parties, or even the judge, may think that the problem would be better resolved, or can ultimately only be resolved, by extra-curial means, is not a justification for refusing to grant an interdict.'[15]

[67] A party who is aggrieved by improper performance of an administrative function is entitled to appropriate relief. Section 8 of PAJA sets out a wide range of just and equitable remedies that may be granted to a party. These include declaratory orders, orders setting aside the administrative action, orders directing the administrator to act in an appropriate manner and orders prohibiting him or her from acting in a particular manner. An order substituting or varying the administrative action or correcting a defect resulting from the administrative action is among the list of the said just and equitable remedies but it will be granted in exceptional circumstances.

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[13] *Setlogelo v Setlogelo* 1914 AD 221 at 227.
[14] *Hotz and Others v University of Cape Town* (730/2016) [2016] ZASCA 159; [2016] 4 All SA 723 (SCA); 2017 (2) SA 485 (SCA) (20 October 2016).
[15] *Op cit*, para 36.

Discussion

[68] Before I deal with the merits of the application, it bears mentioning that the relief that the applicant seeks has not been set out with the required precision and clarity. On a cursory reading of the notice of motion, the applicant purports that the interdictory relief is sought pending the determination, at a later stage, of the review relief. Yet, there is no indication in the notice of motion of the time when the review relief is to be determined. This point was correctly raised by Mr *Skoti*. Mr *Vobi* submitted that the interim relief was sought only in the event that the review relief would not be adjudicated upon instantaneously.

[69] Suffice it to state that if the applicant was minded to have the review application determined in due course, the appropriate course would have been to bring the application in two parts, the first being the interdictory relief pending the determination of the second part, the review relief,[16] on a date that the Registrar would arrange. Alternatively, the applicant could have sought the interdictory relief as an order consequent upon review.[17] That being so, on the date of hearing, the parties argued the entire application as set out in the notice of motion. I must therefore make an appropriate order on the issues delineated as they arise from the entirety of the application.

PAJA or legality review?

[70] Whether the review sought by the applicant was founded on legality or was brought in terms of PAJA was strenuously contested between the applicant and the sixth respondent. Mr *Vobi* persisted with the contention that the urgent review was brought in terms of PAJA.

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[16] See for example *Pikoli v President of the Republic of South Africa* 2010 (1) SA 400 (GNP); *Corium Ltd v Myburgh Langebaan (Pty) Ltd* 1993(1) SA 853 (C).
[17] Section 8 (1) and (2) of PAJA.

Mr *Skoti* took the view that absent specific mention in the applicant's founding papers of the provisions of PAJA in terms of which the review is brought, it cannot be said that the review was brought under PAJA.

[71] It is so that a review, whether founded on the right to just administrative action enshrined in section 33 of the Constitution, or the common law, must be brought in terms of PAJA and the Uniform Rules of Court. In *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae)*,[18] Chaskalson CJ (as he then was) put it this way:

'[95] PAJA is the national legislation that was passed to give effect to the rights contained in section 33. It was clearly intended to be, and in substance is, a codification of these rights. It was required to cover the field and purports to do so.

[96] A litigant cannot avoid the provisions of PAJA by going behind it, and seeking to rely on section 33(1) of the Constitution or the common law. That would defeat the purpose of the Constitution in requiring the rights contained in section 33 to be given effect by means of national legislation.'

[72] Sight must not be lost of the fact that urgent proceedings are bound to be less than perfect owing to the haste with which they are invariably brought. It is for this reason that the court should eschew a formalistic approach which sets great store in form rather than substance. The notice of motion and founding papers do not make reference to a specific provision of PAJA in terms of which the applicant brings the review. However, a proper reading of the notice of motion as reproduced elsewhere in this judgment, and the founding papers, suggests, without any room for doubt, that the applicant brought the review in terms of PAJA. This brings me to the merits of application, and for convenience I start with the review.

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[18] *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* (CCT 59/2004) [2005] ZACC 14; 2006 (2) SA 311 (CC); 2006 (1) BCLR 1 (CC) (30 September 2005) *("New Clicks").*

The merits of the review application

[73] There is no controversy between the parties regarding the fact that the fourth and fifth respondents were performing a public function when they determined the applicant's complaint at the respective stages.[19] A contention was made on behalf of the sixth respondent that the fifth respondent did not dismiss the applicant's appeal. This contention is belied by the assertion that the sixth respondent makes in its answering affidavit that the first respondent subsequently revoked the decision of the fifth respondent by opening the avenue of arbitration in the letter dated 25 March 2025.

[74] Much was made of the first respondent's revocation of the fifth respondent's decision dated 17 March 2025. While I accept that under common law revocation of an administrative decision is permissible in instances such as when the administrator lacked jurisdiction to make the decision, this position seems to clash with the position under the Constitution.

[75] It is by now trite that administrative decisions, until set aside by a court, exist in fact and have legal consequences. Hence, there is a need to have recourse to a procedure that may expeditiously set aside unlawful administrative action.[20] The reasons are not far to seek – revocation powers would breed arbitrariness. Khampepe J who wrote for the majority in *Department of Transport v Tasima,*[21] held as follows:

'Our Constitution confers on the court the role of the arbiter of legality. Therefore, until a court is appropriately approached and an allegedly unlawful exercise of public power is adjudicated upon, it has binding effect merely because of its factual existence.'

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[19] *Ndoro; Ajax,* footnote 11 supra.
[20] *Oudekraal Estates (Pty) Ltd v City of Cape Town* [2004] ZASCA 48; 2004 (6) SA 222 (SCA) at para 26.
[21] 2017 (2) SA 622 (CC), para 147.

[76] Therefore, the revocation contention cannot be sustained. Mr *Baceni* conceded on behalf of the second to fourth respondents that there could not have been room for such revocation, and the fact that the applicant itself requested a redirection of its complaint to arbitration does not alter this position. This concession was well made. The decision of the fifth respondent remains extant. From this finding, it ought to follow that the applicant exhausted the internal remedies that were available to it in terms of the SAFA Competition Rules.

[77] The corollary is that there was no other alternative suitable remedy available to the applicant when he brought this application. Therefore, the contention that the applicant is not entitled to the interdictory relief it seeks must also fail. This then addresses the two points in limine that the applicant has not exhausted internal remedies and has available to him a suitable alternative remedy.

[78] The question that follows is whether as contended by second to fourth respondents and the sixth respondent, the fourth and fifth respondents acted lawfully in making the decisions that they made. The starting point is a proper characterization of the applicant's complaint.

[79] The essence of the complaint is that the decision to appoint the third respondent as match commissioner fell afoul of the already quoted Competition Rule 30.1. For ease of comprehension of this aspect, this is the content of the complaint that the applicant filed with the first respondent on 25 January 2025:

'1. Subject bears reference.

2. This communique serves to Appeal the decision taken by SAFA EC on a complaint we lodged against SAFA Official/Match commissioner for a game between FC Ravens and Sinenkani FC on the following grounds: -

2 .1 The Match Commissioner that was appointed by SAFA designated official Mr Thenjana Mbangatha is the father of one of the home team's (FC Ravens) players, Mr Ntando Mbangatha.

2 .2 The presence of SAFA Official/Match commissioner offended Rule 30.1 of the SAFA Competition Uniform Rules.

2 .3 The complainant met the requirements of rule 19 and was lodged within the prescribed time limit.

3. The response dated 06 February 2025 entitled "Dumisani of a complaint by Sinenkani FC" raises a sense of shock in that, there is no independent committee of SAFA in the form of disciplinary committee that presided over our complaint but instead the same person who deployed the impugned deployment of an official decided the complaint. This is a clear violation of the rules.

4. The EC PEO has no capacity to preside over the complaint he has committed. This conduct does not bring justice any closer to the affected party, Sinenkani SC. Our complaint remains unattended.

5. We believe that this is a very serious matter as it had a bearing on the status of the match official in question and should have been received and attended with the urgency and seriousness on the part of (SAFA EC), having appointed suitable individuals to deal with the complaint objectively.

6. We are hoping for your prompt consideration of this appeal and befitting appeals process be undertaken.'

[80] Quite apart from the meaning that one may ascribe to the wording of this Rule, the paramount question is what the fourth respondent was expected to do upon receiving that complaint. The answer is to be found in Competition Rule 19.7 and 19.8. These Rules read as follows:

'19.7 Upon receipt of a complaint, the Designated SAFA Official shall:

19.7.1 Call for any further written information and documentation from the complainant, and

19.7.2 Forward to the alleged offending party the documentation received from the complainant and advises (sic) the alleged offending party of the nature of the complaint and asks (sic) such party for a written explanation, but warning such party, that such explanation may be later used in evidence against the said party.

19.8 Upon receipt of the replies asked for, or if no replied be received within 5 (five) days of the Designated SAFA Official making the requests in terms of Rule 19.3 above, the matter shall be referred to the Disciplinary Committee in accordance with the SAFA Constitution and these Rules and Regulations.'

There can conceivably be no controversy regarding the fact that the provisions of Rules 19.7 and 19.8 are peremptory.

[81] The fourth respondent's letter dated 06 February 2025 makes it clear that his decision to return the complaint fee was based on the fact that in his view, the complaint was non-compliant with Competition Rules 19.3, 19.4 and 19.5. It is expedient that I reproduce these Rules, and I do so below:

'19.3 The written complaint must set out the the full facts on which the complaint was based and to refer to the Articles and/or Rule and Regulation allegedly contravened by the offending party.

19.4 The complaint must not be in respect of a protest based on the facts similar to a grievance that has been complained of and has been entertained by SAFA and/or SAFA Disciplinary Committee.

19.5 The complaint must not be made against the referee's decision connected with play in any game, except if the complaint contains an allegation of corruption.

19.6 The onus is on the complainant to ensure that the provisions of Rules 19.2, 19.3, 19.4 and 19.5 above are complied with. Should the complainant not comply with the said provision (sic), the complaint fee shall be returned to the complainant.

[82] No doubt, the fourth respondent was entitled to return the complaint fee only if the complaint was non-compliant with the already mentioned rules. In my view, this is akin to disqualifying the complaint on formal grounds as opposed to dismissing it on substantive grounds. In any event, such a disqualification is a decision on its own.

[83] But on any interpretation of the content of the complaint, its essence had nothing to do with play in the match of 25 January 2025 between the applicant and the sixth respondent. It had everything to do with a violation of Rule 30.1 which the applicant explicitly quoted. Furthermore, the facts forming the basis of the complaint appear on the face of it. Lastly, the applicability of Rule 19.4 is manifestly misplaced – it does not find support from the history of the complaint that the applicant provided.

[84] I come to the conclusion that in making the impugned decision, the fourth respondent took into account irrelevant considerations and ignored what was relevant, namely, the content and purport of the Rule 30.1 quoted by the applicant as the basis for its complaint. Section 6(2)(e)(iii) of PAJA provides for this ground of review.

[85] As regards the decision of the fifth respondent, any suggestion that it did not amount to a dismissal of the appeal and/or a refusal to place the complaint cannot be sustained. These are the reasons for this view. The plain text of the fifth respondent's decision dated 17 March 2025 suggests that he upheld the decision of the fourth respondent on the limited ground that it did not comply with Rule 19.5.

[86] Put differently, according to the fifth respondent, the complaint 'was made against the referee's decision connected with play in the match in circumstances where the was no allegation of corruption.' For this reason, his decision was that 'the complaint could not be placed before the Arbitration Tribunal.' Similarly, the fifth respondent moved from an incorrect premise having mischaracterized the complaint and disregarded the relevant Rule 30.1 which was its basis. I have already found that the first respondent could not validly revoke this decision. The fourth and fifth respondents acted unlawfully in making their respective decisions.

Whether this Court can grant the substitutory relief that the applicant seeks is the question I deal with next.

The substitutory relief

[87] The approach that the courts have always followed in the exercise of their discretion in dealing with an administrator's decision under common law was set out in *Johannesburg City Council v The Administrator Transvaal*[22] as follows:

'1. The ordinary course is to refer back because the Court is slow to assume a discretion which has by statute been entrusted to another tribunal or functionary.

2. The Court will depart from the ordinary course in these circumstances:

(i) Where the end result is in any event a foregone conclusion and it would merely be a waste of time to order the tribunal or functionary to reconsider the matter. This applies more particularly where much time has already unjustifiably been lost by an applicant to whom time is in the circumstances valuable, and the further delay which would be caused by reference back is significant in the context.

(ii) Where the tribunal or functionary had exhibited bias or incompetence to such a degree that it would be unfair to require the applicant to submit to the same jurisdiction again.'

[88] With the advent of PAJA, the applicable principles were set out in *Bato Start Fishing (Pty) Ltd v Minister of Environmental Affairs and Others*[23], O' Regan J said of substitutory relief:

'[A] court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a court should give weight to these considerations will depend upon the character of the decision itself, as well as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a

[22] 1969 (2) SA 72 (T) at 76 D-E.
[23] (CCT 27/03) [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) (12 March 2004).

person or institution with specific expertise in that area must be shown respect by the courts. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve that goal. In such circumstances a court should pay due respect to the route selected by the decision-maker. This does not mean however that where the decision is one which will not reasonably result in the achievement of the goal, or which is not reasonably supported on the facts or not reasonable in the light of the reasons given for it, a court may not review that decision. A court should not rubber-stamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision-maker.'[24]

[89] The dictum of the Khampepe J in *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another,*[25] is instructive, with respect, regarding how a court must evaluate the factors set out in *Johannesburg City Council*. The Learned Judge wrote as follows:

'[47] To my mind, given the doctrine of separation of powers, in conducting this enquiry there are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. These may include delay, bias or the incompetence of an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a consideration of fairness to all implicated parties. It is prudent to emphasize that the exceptional circumstances enquiry requires an examination of each matter on a case-by-case basis that accounts for all relevant facts and circumstances.'

[48] A court will not be in as good a position as the administrator where the application of the administrator's expertise is still required and a court does not have all the pertinent information before it. This would depend on the facts of each case. Generally, a court ought to evaluate the stage at which the administrator's process was situated when the impugned administrative action

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[24] *Op cit,* para 48.
[25] *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another* (CCT198/14) [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) (26 June 2015) ; see also *Livestock and Meat Industries Control Board v Garda* 1961 (1) SA 342 (A).

was taken. For example, the further along in the process, the greater the likelihood of the administrator having already exercised its specialized knowledge. In these circumstances, a court may very well be in the same position as the administrator to make a decision. In other instances, some matters may concern decisions that are judicial in nature; in those instances – if the court has all the relevant information before it – it may very well be in as good a position as the administrator to make the decision.

[49] Once a court has established that it is in as good a position as the administrator, it is competent to enquire into whether the decision of the administrator is a foregone conclusion. A foregone conclusion exists where there is only one proper outcome of the exercise of an administrator's discretion and "it would merely be a waste of time to order the [administrator] to reconsider the matter". Indubitably, where the administrator has not adequately applied its unique expertise and experience to the matter, it may be difficult for a court to find that an administrator would have reached a particular decision and that the decision is a foregone conclusion. However, in instances where the decision of an administrator is not polycentric and is guided by particular rules or by legislation, it may still be possible for a court to conclude that the decision is a foregone conclusion.

[90] As held in *Gauteng Gambling Board v Silverstar Development Ltd,*[26] remittal is almost always the prudent and proper course since the administrator is generally best equipped by the variety of its composition, by experience, and its access to sources of relevant information and expertise to make the right decision. The court typically has none of these advantages and is required to recognize its own limitations.

[91] In the context of the present case, the fourth and fifth respondent's failure resulted from their mischaracterization of the applicant's complaint. Significantly, the fifth respondent arbitrarily deprived the applicant of an opportunity to ventilate its complaint before the Arbitration Tribunal. This effectively means that no due

[26] 2005 (4) SA 67 (SCA), para 29.

process was followed. This is the process that Rule 19.7 and 19.8 quoted above required of the fourth respondent (had he properly characterized the complaint).

[92] I am invited to cause the suspension of the third respondent in circumstances where the fourth respondent failed to apply himself properly to the matter which resulted in the correct process not being followed. It would be through the process set out in Rule 19.7 and 19.8 that the matter would be fully and appropriately ventilated. This Court does not have the institutional advantage that the first respondent has, through its designated officials, to make a decision regarding the third respondent's suspension. The same considerations apply regarding the applicant's request that the sixth respondent forfeits the three points it earned after winning the match of 25 January 2025 and the relief ancillary that the applicant seeks in regard thereto. This is where the enquiry regarding the substitutory relief that the applicant seeks must end. For these reasons I hold the view that this Court is not in as good a position to grant the substitutory relief that the applicant seeks.

The interdictory relief

[93] It is not disputed that this application was brought by the applicant in order to protect its status and standing in the League. This is a crucial right that it seeks to protect. What is also incontrovertible is that the playoffs are upon the parties in these proceedings. In other words, they are imminent. No decision has been taken by the first and second respondents to suspend them in the face of these proceedings. And even though no such request was made by the applicant to the first respondent, the respondents who oppose this application have, in their opposing papers, propounded the possibility that existed, of the suspension of the playoffs pending the resolution of the applicant's complaint within the rungs of SAFA dispute resolution processes.

That proposition must, however, also be considered in the light of the fact that it came about after the applicant had resorted to these proceedings for recourse.

[94] I hold the view that if the interdictory relief is not granted, the investigation and determination of the complaint by the first respondent in due course would be academic and irreparable harm will ensue on the part of the applicant. The order I set out below is what I consider to be just and equitable in the circumstances of the present case. But before that order, I must deal in some detail with the issue of costs.

Costs

[95] This matter concerns the exercise of public power by the officials of the first respondent. In *Trencon* the Court endorsed *Bato Star*[27] and held that matters relating to the interpretation and application of PAJA will of course be constitutional matters.[28] The principles that the court enunciated in *Biowatch*[29] find application in the instant matter. In that case the Court said:

> 'In the first place it diminishes the chilling effect that adverse costs orders would have on parties seeking to assert constitutional rights. Constitutional litigation frequently goes through many courts and the costs involved can be high. Meritorious claims might not be proceeded with because of a fear that failure could lead to financially ruinous consequences. Similarly, people might be deterred from pursuing constitutional claims because of a concern that even if they succeed, they will be deprived of their costs because of some inadvertent procedural or technical lapse. Secondly, constitutional litigation, whatever the outcome, might ordinarily bear not only on the interests of the particular litigants involved, but on the rights of all those in similar situations. Indeed, each constitutional case that is heard enriches the general body of constitutional jurisprudence and adds texture to what it means to be living in a constitutional democracy. Thirdly, it is the state that bears primary responsibility for ensuring that both the law and state conduct

[27] *Bato Star,* footnote 23 supra, at para 25.
[28] *Trencon* footnote 25 supra, at para 31.
[29] *Biowatch Trust v Registrar Genetic Resources and Others* (CCT 80/08) [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) (3 June 2009) (*Biowatch*).

> are consistent with the Constitution. If there should be a genuine, non-frivolous challenge to the constitutionality of a law or of state conduct, it is appropriate that the state should bear the costs if the challenge is good, but if it is not, then the losing non-state litigant should be shielded from the costs consequences of failure. In this way responsibility for ensuring that the law and state conduct is constitutional is placed at the correct door.[30]

[96] The applicant has been substantially successful in these proceedings to the extent that I set out in the order below. Mr *Skoti* submitted on behalf of the sixth respondent that it must also benefit from the protection of *Biowatch*. I disagree. It is not from the *Biowatch* principle that the sixth applicant's exemption from an adverse cost order would emanate. The position of the sixth respondent is no different from that of the applicant as none of them are in the position of exercise of public power as it is with the first and second respondents and their officials.

[97] With that said, the sixth respondent, similar to the second to fourth respondents, opted to oppose the relief that the applicant seeks on the grounds already set out. It was its procedural right to do so. Apart from this, an adverse order was sought by the applicant against the sixth respondent. It cannot be said that the opposition by the sixth respondent was without merit. This Court is enjoined to exercise its discretion as to costs in accordance with what is fair between the parties. It seems to me that the applicant and the sixth respondent found themselves at loggerheads in this application, so to speak, as a result of the already mentioned improper exercise of public power by the officials of the first and second respondents, namely, the fourth and fifth respondents.

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[30] *Biowatch*, at para 23.

[98] In so far as the third respondent is concerned, the position is different in that the decision to appoint him as match commissioner was at the centre of the complaint by the applicant. As far as I could have ascertained from the papers filed of record, nowhere does the third respondent deny the allegation that he is the biological father to Mr Ntando Mbangatha. The crux of his opposition is that the applicant has not proven any unfair advantage that accrued to the sixth respondent as a result of his appointment.

[99] The rules of the beautiful game, as it is often called (both the ethical and technical rules) are known to the third respondent, among other persons to whom they apply. The third respondent took the risk of joining the fray in these proceedings in circumstances where he knew or ought to have known that no due process was followed where the cogency of his defence as against the cogency of the applicant's complaint was ventilated. I find no reason to exempt him from paying the applicant's costs.

[100] What is fair between the two non-public functionary parties (the applicant and the sixth respondent) is that the sixth respondent be exempted from paying the applicant's costs despite its failure to successfully oppose this application.

Order

[101] In the result, I make the following order:

1. The decision of the fourth respondent dated 06 February 2025 dismissing applicant's complaint is hereby declared invalid, unlawful, unconstitutional for violating Rules 19.7; 19.7.1; 19.7.2; and 19.8 of the SAFA Competition Uniform Rules and section 33(1) of the Constitution of the Republic of South Africa Act No. 108 of 1996, and it is hereby reviewed and set aside.
2. The decision of the fifth respondent dated 17 March 2025 refusing to place the applicant's appeal before the Arbitration Tribunal is declared invalid,

unlawful, unconstitutional for violating Rules 25(1) and (3) of the SAFA Competition Uniform Rules and section 33(1) of the Constitution of the Republic of South Africa Act No. 108 of 1996, and it is hereby reviewed and set aside.

3. The matter is remitted to the first respondent for proper investigation and determination of the applicant's complaint in accordance with the relevant and applicable provisions of the first respondent's Uniform Competition Rules.
4. Pending the investigation and determination of the applicant's complaint in the manner set out in paragraph 3 of this order, the match scheduled to play on 11 April 2025 between the sixth and seventh respondents is hereby interdicted.
5. The first, second, third, fourth and fifth respondents shall pay the costs of this application, and such costs shall include the cost of two counsel where employed.

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L. RUSI

JUDGE OF THE HIGH COURT

Appearances:

For the applicant:	Adv. *S Vobi*
	Adv. *Z Makangela*
Instructed by:	Makangela Mtungani Inc.

For the 2nd to 4th respondents: Adv. *Z Baceni*

Instructed by: Ndzo Attorneys

For the sixth respondent: Adv. *D Skoti*

Instructed by: M. Hlazo Inc.

Date heard: 02 April 2025

Date delivered: 09 April 2025